

ONLINE PLATFORMS AND DIGITAL ADVERTISING MARKET STUDY

News UK's comments on the Interim Report

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 This submission is made by News Corp UK & Ireland Limited (**News UK**) in response to the Interim Report published by the Competition and Markets Authority (**CMA**) on 18 December 2019 in connection with the CMA's online platforms and digital advertising market study (the **Market Study**). As the CMA is aware, News UK is the principal UK operating company of the group of companies headed by News Corporation (together, **News Group**) and, where relevant, this submission also reflects the views of and input from the wider News Group.
- 1.2 As explained to the CMA, News UK is reliant in significant part on advertising revenues to fund its newspapers in the UK and elsewhere. This gives it an important interest in the proper functioning of digital advertising markets. News UK therefore welcomes many aspects of the CMA's interim findings, much of which takes account of the submissions and evidence that News UK has provided to the CMA during the course of the Market Study to date.
- 1.3 In responding to the Interim Report, News UK has primarily focussed on the issues relating to competition in digital advertising (and in particular, the open display market), the potential regulatory interventions that could address these concerns, and the CMA's preliminary view that it is minded not to propose a market investigation reference. In summary:
- (i) News UK welcomes the CMA's findings that both Google and Facebook have significant market power, and that Google's '*particularly strong position*' in advertising intermediation gives rise to '*legitimate concerns about perceived conflicts of interest*' as a result of it operating at multiple levels of the intermediation value chain.¹ The Interim Report acknowledges the concerns raised by News UK about Google's ability to exploit its position on both sides of the market, and to leverage its market power in search advertising, to strengthen its position in advertising intermediation.² As set out in more detail in Section [3] below, News UK considers that there is further evidence gathering and analysis would allow the CMA to confirm the anticompetitive effects of these practices. In particular, News UK would encourage the CMA to conduct a more detailed analysis of revenue flows within the ad tech stack, building on the CRA analysis that has been shared and discussed with the CMA, to allow it to fully assess the potential for 'hidden fees' arising from arbitrage behaviour by Google.
 - (ii) News UK would also encourage the CMA to critically assess some of the submissions that Google has made during the course of the market study to date with regard to its intermediation activities. In particular, News UK considers that any claimed technical efficiencies regarding cookie matching and latency that arise from Google's vertical integration are unlikely to withstand proper legal and economic scrutiny, in view of the less restrictive alternatives (e.g. common IDs) which could address both issues without any foreclosure effects.³ Similarly, Google's response on its lack of participation in

¹ Para. 55.
² Para. 5.202.
³ Para. 5.187.



header bidding requires further interrogation.⁴ News UK submits that there is no basis for Google to act as the arbiter in relation to considerations around the potential adverse consequences of header bidding for consumers, such as the risk increased latency. These are factors in relation to which publishers are best-placed to trade-off the need to monetise their services with a desire to offer an attractive user experience and where Google's incentives are subject to clear conflicts of interest. Google cannot cite these factors as justification for conduct that adversely affects competition in the intermediation space.

- (iii) With regard to the Interim Report's proposals for regulatory interventions, News UK welcomes the CMA's endorsement of the recommendation of the Furman Review for the introduction of a new ex-ante regime to regulate the activities of online platforms that are deemed to have "strategic market status" (and that the CMA envisages both Google and Facebook would be so designated). As described in News UK's submissions to the CMA on this topic, it also agrees that any code of conduct should be principles-based and capable of governing market players' future conduct, as well as resolving specific issues that have already arisen.⁵ Moreover, it is crucial that any new regulator has strong enforcement powers, including extensive information-gathering tools and the ability to impose penalties that would be material even to undertakings of the scale of Google and Facebook. Such penalties should be available in respect of both substantive and procedural infringements (reflecting the difficulties of gathering complete and accurate information in such opaque markets). News UK recognises that a new regulatory regime of this nature would require the introduction of primary legislation; given the fast moving nature of these markets and the potential for competitive harm, News UK would encourage the CMA to seek assurances that it remains a legislative priority for the new government.
- (iv) While proposals for regulatory reform would go some way to addressing the concerns that have been identified in the Interim Report, the CMA acknowledges that a potential limitation of a code of conduct is that it may not restrict all of Google and Facebook's incentives to exploit the market position that they have built up to their own advantage.⁶ News UK considers that this is particularly the case in relation to the discrete issues that arise as a result of Google's vertical integration in advertising intermediation. News UK therefore considers that additional targeted interventions over and above the proposed code of conduct would be necessary to address these concerns. In particular, for the reasons that News UK has outlined to the CMA, it considers that some form of separation of Google's ad server (formerly DFP) and ad exchange (formerly AdX) – now both integrated in Google Ad Manager – is necessary as is intervention to prevent Google from tying its ad intermediation services with key sources of advertiser demand such as YouTube. While News UK recognises full ownership separation may require co-ordination with enforcement action in other jurisdictions, the CMA is encouraged to explore implementation of effective functional separation.
- (v) In order to build a full evidentiary basis for such action, News UK considers that it would be appropriate for the CMA to make a targeted market investigation into the specific concerns identified in the Interim Report concerning the open display market. The Interim Report acknowledges that these are complex issues to assess, exacerbated

⁴ Para. 5.216.

⁵ See News UK's submission on potential remedies, dated 10 October 2019.

⁶ Para. 6.161.



by the opacity of the intermediation value chain. A market investigation would allow the CMA the time to fully assess these concerns and their potential for competitive harm (and to continue to build consensus with international counterparts), thereby allowing it to take a fully informed view on the need for intervention. If the CMA concludes that such intervention is warranted, News UK submits that it can only realistically be achieved through the CMA's order making powers following a market investigation. In News UK's opinion, a focussed market investigation into this issue would be complementary to, and mutually reinforcing of, recommendations to government for regulatory reform.

1.4 The remainder of this submission is structured as follows. **Section 2** provides responses to the CMA's questions in relation to the markets within the scope of the Market Study. **Section 3** responds to the question on the CMA's initial findings and concerns under each theme. **Section 4** responds to the questions on the merits and challenges of the potential interventions identified. Finally, **Section 5** provides News UK's views on the CMA's questions regarding any market investigation.

2. RESPONSES TO QUESTIONS ON THE MARKETS WITHIN THE SCOPE OF THE MARKET STUDY

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

2.1 Yes, News UK generally agrees with the CMA's descriptions of general search services and social media services as set out in Chapters 2 and 3 of the Interim Report. News UK agrees with the observation that Google and Facebook dominate the UK digital advertising space and are protected by significant barriers to entry, many of which are exacerbated by these firms' past conduct. News UK notes also that these firms play an equally important role as a traffic source for third party operations including publishers and vertical search providers.

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

2.2 News UK generally agrees with the CMA's explanation of the different forms of digital advertising, as set out in Chapter 5 of the Interim Report.

2.3 News UK agrees that search, display and classified advertising serve different purposes and are materially differentiated. Indeed, the two sorts of advertising display important complementarities: an efficient advertising campaign should both raise awareness of the brand and then convert potential clients that have shown interest. These complementarities have important implications as they allow Google to leverage its position in search to channel advertiser demand to its intermediation services.

2.4 News UK agrees that owner-operated and open display advertising are similar from advertisers' perspective, but that this does not read across to publishers. While Facebook might (to some degree) provide an alternative to open display from advertisers' perspective, it provides no such alternative for publishers. While Facebook provides tools to sell and serve ads on its own properties, its operation in ad tech for third party sites is limited and declining. Thus, a publisher deciding which publisher ad server to use or which ad exchanges to plug into does not have the option of switching from Google services to Facebook services. Any



competition at the advertiser-level between these formats does not alter the fact that publishers are reliant on the open display ecosystem to operate and that effective competition between intermediation services is necessary for the open display segment to deliver good outcomes for users.

2.5 News UK also agrees with the view that digital advertising is distinct from more traditional advertising modes while noting that the converse view would not be correct (digital advertising significantly constrains traditional advertising options).

2.6 By way of exception, News UK does not agree that a distinction should be drawn between video and non-video advertising. From News UK's perspective, the relevant distinction is that between digital and other forms of advertising described above.

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

2.7 News UK broadly agrees with the CMA's factual explanation of how the intermediation in the open display advertising market functions, but has certain comments on the conclusions that the CMA draws from this in relation to competition in digital advertising - please refer to News' response to question 7 below.

2.8 News UK also notes that aspects of Appendix H appear to reflect submissions made by Google, for example regarding the rationale for, and supposed ending of, AdX's "last look" advantage (paragraphs 19 and 23). News UK would encourage the CMA to assess such submissions critically – for example, as the CMA itself notes at paragraph 23, publishers (including News UK) have little confidence that AdX no longer retains such an advantage.

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

2.9 Yes, News UK generally agrees with the CMA's understanding of the role of data, as set out in Appendix E but has certain comments on the conclusions that the CMA draws from the role of data - please refer to News UK's response to question 7 below.

2.10 Regarding Appendix E specifically, News UK has limited comments. News UK welcomes the CMA's recognition that Google and Facebook have unmatched positions in terms of data collection, and that this flows through to competitive advantages in digital advertising markets. The evidence reported under paragraph 34 of Appendix E – showing that Google obtains consumer consent, collects user information and matches data from more than 53 consumer-facing services in the UK – is particularly telling as regards Google's incomparable data advantages from the log-in nature and the multitude of its services.

2.11 User data is an essential input for display advertising. A central question therefore is whether and how such data can be shared to foster effective competition while preserving privacy, i.e., remaining anonymous/removing the ability to personally identify a user. In that respect, News UK would welcome clarifications on the concerns expressed by the ICO that "*consent is the only valid basis for processing the data in bid requests, and that it is not possible for consumers to provide valid consent to their personal data (including sensitive personal data) to be shared with an unknowable (from the perspective of the consumer) and large number of parties, with unknowable controls and security measures*". More generally, this boils down to the pressing need for clear, objective, non-discriminatory and practical translation of privacy



principles including GDPR. This is recognised by the CMA and represents a priority in News UK's view.

3. RESPONSES TO QUESTIONS ON THE CMA'S 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?*

3.1 Yes, News UK generally agrees with the CMA's findings in relation to competition in search and social media, as set out in Chapter 3 of the Interim Report.

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

3.2 News UK generally agrees with the analysis and findings. It agrees that consumers should have control over their data and that major platforms should not be able to extract excessive data either by exploiting the essentiality of their services, the power of default bias or by using complex and opaque terms and conditions. That said, News UK shares the CMA's concern that an appeal to legitimate data protection concerns could be used by larger, vertically-integrated operators to limit data sharing in a manner that limits effective competition and would encourage the CMA to think about these issues holistically and ensure that, where necessary, privacy and competition considerations are appropriately balanced.

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

3.3 News UK largely agrees with the CMA's analysis and findings in relation to competition in digital advertising as set out in Chapter 5 of the Interim Report. News UK welcomes the finding that advertisers and publishers "*are likely to be facing worse outcomes than in a more competitive market*" with implications for consumer prices and investment in content generation. It has some targeted commentary on certain aspects of the CMA's analysis and conclusions, however.

3.4 **The efficiency justifications put forward by Google (e.g. in respect of vertical integration and latency) are poorly evidenced and unconvincing.** At several points the CMA notes that vertical integration can give rise to technical efficiencies regarding, in particular, cookie matching and latency and this appears to be Google's primary efficiency justification for its conduct.⁷

3.5 News UK would urge the CMA not to take these efficiency claims at face value. First, Google has provided no justification for why it should be the chief adjudicator as to the appropriate trade-off between latency and monetization on the part of publishers. Google also does not distinguish between latency that could affect the consumer experience (i.e., noticeable delay) and latency that does not affect the consumer experience but would nonetheless promote a dominant player with direct and unobstructed access to used IDs and

⁷ E.g. para. 5.198: "*Vertical integration can allow intermediaries to realise technical efficiencies to the benefit of advertisers and publishers*" and para. 5.226 "*we note that there are efficiency reasons why a DSP would tend to buy impressions from its vertically integrated SSP more often than from other SSPs. As discussed earlier in this section, when the DSP and the SSP are operated by the same company, they use the same user identifier, eliminating the loss of data due to failed cookie matching.*"



servers; addressing the latter only benefits Google. Individual publishers have every incentive to bear in mind the quality of the user experience they provide to users and trade this off against the potential latency effects of integrating additional ad tech partners. Header bidding makes a good example. If Google's Open Bidding alternative⁸ was truly more efficient, publishers would naturally use it instead (internalising impact on consumer experience, as the CMA notes).⁹ This conclusion is particularly clear when one considers the ulterior motives Google might have to take steps to limit the emergence of technologies that threaten its central role within the ad tech ecosystem.

- 3.6 Second, many of the alleged benefits of vertical integration have arisen precisely because of steps taken by Google to limit information sharing and inter-operability within the ad tech stack. There is a degree of self-fulfilment: today's level of latency in header bidding or cookie matching rate is also the result of Google's refusal to actively participate in and contribute to these solutions. Benefits of vertical integration could be achieved by more competitive alternatives (such as common IDs). Indeed, much of the movement towards vertical integration by third-party ad tech providers has been a competitive response to Google's conduct (e.g. the quasi-tying of DFP and AdX).
- 3.7 Finally, it is not clear that any benefits of vertical integration would be passed onto consumers, advertisers or publishers, considering Google's conduct reinforces its market power (therefore it is able to charge more on the advertiser side) and consists in stacking up multiple non-transparent auctions where it effectively keeps double-marginalisation intact (on the publisher side) as described in paragraph 3.11 below.
- 3.8 **It is critical that steps be taken to ensure platforms provide data to measure performance and avoid a situation where they are "marking their own homework".** The CMA has found that there are significant benefits from running independent testing of the advertising effectiveness¹⁰ with submissions showing that access to appropriate measurement tools can significantly improve advertising performance.¹¹ As the CMA notes, Google has taken multiple steps that make it more difficult for advertisers and publishers to run their own independent experiments (e.g. removing ability to export data out of Google Ads Data Hub on the advertiser side and removal of time stamp variables in data transfer files on the publisher side).
- 3.9 News UK agrees with the CMA's concern that "*SSPs will find it increasingly difficult to demonstrate how they add value for publishers, while publishers will have less incentive to sustain the costs of integrating non-Google SSPs through header bidding*" and considers that the justification reported by Google is vague and its appeal to privacy concerns unconvincing. Given the CMA's findings, News UK would urge the CMA to pursue these issues as a matter of urgency as it is clearly unsatisfactory that major platforms be permitted to "*mark their own homework*" (paragraph 5.124).

⁸ Previously known as Exchange Bidding.

⁹ Para. 5.108: "*Suppliers of display advertising face a trade-off in deciding on how much inventory to create. A higher 'ad load' may mean greater immediate financial reward. However, this can come at the expense of the consumer experience to some extent.*"

¹⁰ See discussion at para. 5.42. See also Rao, J., and Simonov, A. (2018). 'Firms' Reactions to Public Information on Business Practices: Case of Search Advertising'.

¹¹ Evidence shared by Microsoft is telling in that respect, showing how Air France could, via appropriate measurement tools, reduce its CPC by 26% and increased sales by 43%. See Appendix E para. 125.



- 3.10 **News UK welcomes plans to further understand Google’s implicit commission.** News UK agrees on the importance of continuing the work during the second half of the Market Study. This analysis should be done on disaggregated impression-level data.¹² News UK considers that the difficulties cited by the CMA¹³ in conducting such an analysis can be overcome provided Google communicates the right data. Google knows the actual click-through rate (CTR) – which is reported in some of Google’s reporting tools accessible by News Corp. This would allow the CMA to convert CPCs into CPMs and get comparable figures on both sides of each transaction. News UK is happy to provide further input on how an appropriate empirical methodology could be constructed.
- 3.11 **The ability to extract rents (e.g. by reducing market transparency) has further knock-on impacts via increased foreclosure incentives.** As recognised by the CMA, the lack of transparency is a problem because participants cannot make informed choices that are necessary for healthy competition. One of these aspects is hidden “implicit commissions” (e.g. via Google’s double auction mechanisms). News UK reiterates that concerns around these issues do not stop just at the harm they cause to publishers. As shown in the CRA Report submitted to the CMA, the greater the ability of Google to extract the incremental value of Google Ads vs. other DSPs, the larger the range of situations in which Google has ability and incentive to engage in anticompetitive conduct resulting in foreclosure of competing ad tech intermediaries.
- 3.12 **Single-homing behaviour by advertisers (and particularly smaller advertisers who are a key part of Google’s customer base) is likely to facilitate foreclosing effects.** The CMA has found that small, “long-tail” advertisers constitute a key component of Google’s customer base and that these advertisers are disproportionately likely to single home.¹⁴ The CMA has further found that “*all advertisers who had decided to use a single DSP across all their campaigns chose DV360*”.¹⁵ This single-homing dynamic is likely to exacerbate Google’s ability to use tying/bundling style behaviours to foreclose competition.
- 3.13 **Google’s defence for requiring uniform floors is vague and unconvincing.** The Interim Report states that “*Google told [the CMA] that under the newly introduced unified first-price auction per-buyer floor are less relevant*” (footnote 273). News UK does not understand Google’s claim and, in any event, does not understand why Google considers that it should be in a position to decide on publishers’ and advertisers’ behalf what is relevant and what is not when it comes to pricing decisions: if publishers consider that Google’s changes make differentiated floor prices less relevant they will stop using them and, if not, there is no reason for Google to arbitrarily restrict publisher choice.
- 3.14 **While technical switching costs in ad serving are material, the primary risk is a fear that switching will result in a loss of access to Google demand.** The CMA exposes numerous barriers to ad server switching faced by publishers at paragraph 5.206: technical complexity, long and costly process, operational risks and costs, demand losses from the transition, incompatibility with other ad servers and potential loss of historical data. The gist is well summarised by R. Vidakovic, founder of AdProfs, an independent ad tech consultancy: “*As a publisher, replacing your primary ad server is not a trivial task. Think of it like doing a mid-*

¹² As was discussed in the CRA report submitted on 29 November 2019.

¹³ Footnote 271 of the Interim Report states “*in the case of Google Ads, assessing the difference between what advertisers pay and the bids that Google Ads submits is complicated by the fact that advertisers are often charged on a pay-per-click basis, while the bids submitted into the exchanges are on a cost-per-mille (cost per 1000 impressions) basis*”.

¹⁴ Para. 5.19 of the Interim Report.

¹⁵ Para. 5.209 of the Interim Report.



flight engine swap on an airplane. Except that it's your revenue engine. It's hard to imagine many publishers wanting to take such a risk".¹⁶ News UK concurs with these issues, but notes that they are all overshadowed by the commercial risk that moving to an alternative publisher ad server would jeopardise access to advertiser demand using Google's intermediation services. News UK adds that this risk is even more prevailing due to future uncertainty: risks does not only exist today (due to *existing* links between different elements of Google's ad tech stack that reduce interoperability) but also in the future considering how Google can and does *change its behaviour* unilaterally with limited warning and in a non-negotiable way. Therefore, even if a non-Google ad server could be identified today as being a potential viable solution, the risk of future lack of interoperability would likely make the switch unprofitable in expectation.¹⁷

- 3.15 **On the incompatibility of header bidding and "last look"**: the Interim Report exposes how Google's refusal to participate in header bidding is inefficient and can give Google a "last look" advantage (paragraph 5.215). News UK shares these concerns but would like to make certain comments.
- 3.16 First, Google's main justification relayed in the Interim Report is that header bidding would increase latency and degrade consumer experience. But, again, publishers and consumers do not need Google to tell them what is efficient and what is not: there is no market failure for Google to address and no reason to think its incentives are better aligned with those of consumers than individual market participants.
- 3.17 Second, while the CMA discusses inefficiencies from publishers' perspective, more consideration could be given to harm to rivals including SSPs.¹⁸ As well as depressing payments to publishers Google's conduct artificially increase the volumes won by Google vs. other SSPs.¹⁹ This harm is substantial: an analysis of News UK data shows the "last look" issue is even more pronounced for News UK [CONFIDENTIAL].
- 3.18 Third, the CMA states that Google said it revoked some of its previous advantages. This claim is not verifiable for publishers and, even if true, provides no assurance as to Google's future conduct. Intervention is required to ensure transparency and prevent Google from abusing its position. News UK would be happy to provide assistance in designing an empirical approach to test Google's claims and ensure safeguards are in place.
- 3.19 **On data issues**: the CMA recognises that Google and Facebook have unrivalled positions in terms of data access, collection and exploitation, leading to their strong competitive advantages in digital advertising markets. However, the CMA also notes that there is "*a wide range of companies that provide data then can be used to augment the data already possessed by advertisers and publishers and enhance the ability to target advertising to specific types of audiences*" (paragraph 5.170). It adds that "*rival platforms did not suggest that accessing consumer data was an insurmountable barrier to entry.*" News UK does not dispute this. However, the amount of data available and usable significantly differs between competitors, which should be the focus of attention. The question is not so much whether data barriers are

¹⁶ <https://adprofs.co/beginners-guide-to-header-bidding/>

¹⁷ Discounted for risk aversion.

¹⁸ Beyond degradation of quality and foreclosure of competing ad servers discussed and adds to the harm resulting from Google's "*incentive to degrade the quality of rival providers, by favouring its own intermediation services, so that rivals are less attractive to publishers, making a foreclosure strategy less expensive to implement*" (para. 5.218).

¹⁹ Google would not have necessarily won these impressions if it had participated in header bidding, as it would have bid a value lower than its willingness to pay according to economic theory on first-price auctions (e.g. Prebid runs a first-price auction).



“insurmountable”, but rather whether unjustified data restrictions, such as limiting ID access in 2018,²⁰ untying bid data transfer files in 2019,²¹ announcing the removal of third-party cookies in Chrome in 2020,²² and further scrambling key values in publishers’ files in 2020,²³ exist and reduce competition. Google’s decision to render third-party cookies obsolete – which involved no pre-consultation of other stakeholders or ad tech players – is a telling example of how Google can unilaterally interpret the meaning of privacy and reshape industry standards as it sees appropriate. Concerns go well beyond Google’s *position* and relate to multiple *conducts* at different levels of the digital advertising markets, most notably restrictions on data matching, attribution and measurement (on both advertiser and publisher sides). Relevance of data should also be considered. By way of example, when Google decides to stop sharing bidding data with News UK, News UK cannot find “alternatives” regardless of the amount of data that may be accessible elsewhere. Only Google possesses the relevant data. Therefore, even though data is accessible by rivals to some extent, market outcomes could be significantly improved in a more competitive environment where rivals could collect and use data on a level-playing field and where Google’s conduct is effectively tackled.

- 3.20 **On the impact of GDPR:** the CMA concludes that “*privacy concerns and the application of GDPR are likely to have a significant impact on the market, reinforcing the trend towards vertical integration and potentially increasing the data advantage of the large platforms that have their own sources of first-party user data, making it harder for third parties to compete. These trends could exacerbate the existing competition concerns*”. News UK agrees with these concerns but notes that many of the data advantages benefiting large platforms from the application of GDPR may not exist *per se*, but rather result from these same platforms’ liberal interpretation of what GDPR should mean. News UK would urge the CMA to explore whether platforms’ privacy claims are justified or if they are using GDPR as a smokescreen to restrict inter-operability and competition.
- 3.21 **On issues in comparing advertising performance across DSPs and multi-homing:** the Interim Report notes that most advertisers “*suggested that while there were some issues in comparing advertising performance across platforms, these were not sufficient to stop them multi-homing*” (paragraph 5.17). News UK considers that this statement understates the potential risks of steps taken by platforms to undermine comparability and attribution and the benefits of improving such comparability. If comparability is undermined then advertisers may only multi-home when they see DSPs as significantly differentiated and will otherwise tend to gravitate to the single biggest DSP, i.e. Google, for a given type of demand/advertising goal. As the CMA rightly observes “*a single DSP is typically used for a given campaign*” (paragraph 5.208). The ability to compare services is therefore always relevant at the campaign level, or for a given advertising goal, or for smaller publishers, where several DSPs would theoretically qualify, but face practical difficulties in so proving.

²⁰

See e.g. <https://adage.com/article/digital/google-s-move-remove-doubleclick-id-presents-issues/313415>

²¹

See e.g. <https://www.adexchanger.com/platforms/3-auctions-rule-digital-advertising-heres-a-guide-to-navigating-them/> (section headed “*Data transparency and extra data*”).

²²

See e.g. <https://www.adexchanger.com/data-driven-thinking/google-you-finally-really-did-it/>

²³

See e.g. <https://www.adexchanger.com/publishers/with-googles-latest-policy-change-publishers-feel-control-slipping-away/>



4. RESPONSES TO QUESTIONS ON 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?*

4.1 News UK continues to endorse the introduction of specific ex ante regulation for large online platforms, such as an enforceable code of conduct, for the reasons set out in its response to the CMA's Statement of Scope. News UK considers that the evidence and analysis set out in the CMA's Interim Report confirms the case for this, as a means to limit platforms' ability to exercise their market power.

4.2 However, News UK also agrees with the CMA's decision to consider the merits of other targeted interventions as complements to the development of a code of conduct. In particular, as the CMA recognises (at paragraph 6.156 of the Interim Report), a code of conduct may not restrict all of Google and Facebook's incentives to exploit their market position, and may be difficult to monitor. News UK therefore agrees with the CMA's decision to consider the case for measures requiring the separation of aspects of the businesses of large integrated platforms, which would mitigate these challenges (see further the response to question 12 below). News UK notes that this approach is consistent with the general competition policy preference for structural over behavioural interventions. A market investigation would provide the appropriate basis for such intervention, as discussed below.

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

4.3 News UK agrees that the Interim Report identifies the range of *current* practices that should be subject to investigation under the code (in particular, in Table 6.1). However, as the CMA notes (e.g. at paragraph 6.37), these are complex and rapidly changing markets where overly prescriptive rules may become redundant. It is important that the code should not be drawn in a way that would prevent intervention against any problematic new practices that may arise.

4.4 News UK therefore welcomes the CMA's proposed principles-based approach, which is broadly in line with the approach advocated in News UK's response to the Statement of Scope. However, while the three principles of "Fair Trading", "Open Choices" and "Trust and Transparency" appear sufficiently broad to respond even to currently unanticipated concerns, News UK suggests that the CMA should consider the case for allowing the regulator responsible for the code to update these or promulgate additional principles if required. The regulator should also have significant discretion in the application of these principles to specific market behaviour.

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

4.5 News UK has no particular comments on the CMA's specific proposals to address Google's and Facebook's market power in general search and social media respectively (paragraphs 6.61 to 6.84 of the Interim Report), and in principle recognises the merits of interventions that would address their market power at source rather than merely constraining its exercise.



- 4.6 However, News UK believes the CMA should be realistic about the likelihood of such interventions succeeding, either within a reasonable time-frame or at all. While the Interim Report sets out a well-reasoned case as to why each of the remedies in general search (access to click-and-query data, rules relating to search engine defaults and rules relating to syndicated search results) would be worth attempting, any effects are likely to be small and seen only over the long term. In a world where “Google” is now synonymous with search, it can expect to enjoy significant market power in this area for the foreseeable future, regardless of any intervention by the CMA.
- 4.7 As such, while News UK does not oppose measures to improve contestability in general search, it considers that the emphasis should be on restricting Google’s ability to exploit its market position in search and elsewhere: such interventions are more likely to be effective and should therefore be the primary focus.

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

- 4.8 News UK is not aware of additional remedies that the CMA should be considering to improve consumers’ control over their data, beyond those outlined in paragraphs 6.89 to 6.150 of the Interim Report. However, News UK would note two points regarding such remedies.
- 4.9 First, and as above, News UK welcomes the CMA’s recognition (at paragraph 6.119 onwards) that measures intended to protect consumers’ data may have unintended consequences that allow large integrated firms such as Google to reinforce their market position (as illustrated by Google’s purported reliance on the GDPR to refuse to provide information to publishers; described in News UK’s previous submissions). Avoiding this should be an important consideration in the design of remedies in this area.
- 4.10 Second, News UK notes that the CMA intends to consider in the second half of the Market Study whether the proposed requirement on platforms to allow consumers to opt out of personalised advertising should be extended to publishers, such as newspapers (paragraph 6.100). News UK does not believe that such an extension is warranted. Consumers have a genuine choice whether to use any given publisher’s website, in contrast to the position facing the users of dominant platforms such as Google and Facebook. As such, competitive forces are far more likely to discipline individual publishers’ approach to privacy and, as such, regulatory intervention is not required.
- 4.11 Moreover, while platforms that have on the CMA’s analysis been generating a “*return on capital...substantially higher than any reasonable estimate of what we would expect in a competitive market*”²⁴ would be able to absorb any resulting loss of advertising revenues without difficulty, the same is not true of publishers such as newspapers that are already under severe financial pressure. This observation is particularly critical when one considers the positive spill over benefits that a well-funded press generates for public debate and society at large.

²⁴

Interim Report, Chapter 2 overview.



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

- 4.12 News UK agrees that Interim Report covers the principal categories of remedy that could help address conflicts of interest and a lack of transparency in digital advertising markets, i.e. *ex ante* regulation, measures to bring about the separation of integrated platforms, access to YouTube inventory for third-party DSPs, and the specific measures to promote transparency described at paragraph 6.178 of the Interim Report.
- 4.13 In News UK's view, the key point is that none of these remedies is likely to be effective in isolation – in particular, as noted above, *ex ante* regulation of platforms' behaviour, while helpful, should be complemented by structural interventions wherever practicable, so as to reduce the difficulties inherent in monitoring compliance and address platforms' incentives to circumvent such regulation. As such, News UK strongly endorses the CMA's decision to consider options for the separation of integrated platforms and, in particular, the scope for separation between Google's ad server (formerly DFP) and ad exchange (formerly AdX), which are currently both integrated in Google Ad Manager. News UK submits that a market investigation should be initiated to evaluate such a remedy and its effectiveness (see further below).

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?

- 4.14 News UK has focused its comments on the interventions that are most relevant to its business as a publisher and/or are most likely to be effective - i.e. the code of conduct and the potential interventions in digital advertising markets – and responds to the detailed consultation questions on these in **Annex 1** (responding to the questions in Appendix I) and **Annex 2** (responding to the questions in Appendix M).
- 4.15 As described above, News UK is not opposed to other measures intended to address platforms' market power at source (Appendices J and K), but does not have detailed comments on them at this stage.
- 4.16 Similarly, while News UK takes consumers' privacy seriously, it does not at this stage have detailed views on the technical questions raised regarding the technologies discussed in Appendix L. News UK does, however, welcome the CMA's acknowledgement (at paragraph 134 of Appendix L) of the need to balance the merits of privacy-enhancing technologies against their potential impact on the value of advertising inventory, and therefore the viability of ad-supported business models).



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

4.17 For the reasons set out in Section 5 below, News UK believes that separation remedies should be further evaluated and, if appropriate, implemented through a market investigation running in parallel with the implementation of other remedies that require primary legislation, such as the code of conduct.

5. 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?

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

5.1 News UK welcomes the CMA's finding that the statutory test for reference is met (i.e. that there are reasonable grounds for suspecting that features of the relevant markets restrict or distort competition) in respect of the open display advertising, general search and search advertising, and social media and display advertising markets (paragraph 7.8 of the Interim Report), and that the size of these markets and the number of consumers affected by them would make a reference a proportionate response. News believes the case for these conclusions is compelling and that, accordingly, it would clearly be open for the CMA to make a reference.

5.2 However, News UK respectfully disagrees with the CMA's proposal not to make a market investigation reference in respect of the open display advertising market. In News UK's view, there are distinctive features of this market that provide a strong case for a targeted market investigation to be taken forwards in addition to recommendations to government.

5.3 The concerns that have been identified in this market appear in large part linked to a specific structural feature of the market: the vertical integration between Google's publisher ad server and its other ad tech products. Google's publisher ad server is arguably the principal (though certainly not the only) source of its market power in the ad tech stack (see e.g. Figure 2 on page 19, noting Google's 90%+ share of publisher ad servers), and play a key role in creating conflicts of interest.

5.4 As the Interim Report recognises, this structural feature of the market is potentially amenable to a specific intervention, requiring some degree of separation to be implemented between Google's publisher ad server and its other advertising intermediation activities. The Interim Report also recognises that a separation remedy could be implemented through the order-making powers available to the CMA at the conclusion of a market investigation (paragraph 7.10)

5.5 News UK would suggest that a market investigation is not only a possible route to the evaluation and potential implementation of a separation remedy, but the most appropriate means of doing so.

(a) The CMA's powers in this area are a long-standing and well-recognised feature of the UK competition regime. In contrast, while separation could in principle be mandated



through primary legislation, the use of legislation targeting a single company would be highly unusual, and the CMA should not assume that government would be willing to implement such a remedy in this way.

- (b) In explaining why the CMA is not minded to make a market investigation reference, the Interim Report notes that the implementation of “*any significant structural remedies, such as those involving ownership separation*” could require international co-operation (paragraph 7.16). However, in News UK’s view, this reinforces the case for a market investigation. A market investigation would allow the CMA to engage further with its international counterparts over an extended period. Moreover, the formal nature of the process would signal the CMA’s seriousness of intent, and in doing so could help drive more focused engagement on the issues.
- (c) The Interim Report also notes that the CMA “*still [has] considerable work to do to understand the nature and extent of the issues in the market, and what the appropriate range of remedies might be to address them*” (paragraph 7.18). Again, News UK would suggest that this argues for, rather than against, a market investigation reference; especially one focused on the open display advertising market which, as the Interim Report notes, was not studied in any detail in the Furman Review (paragraph 7.15). The market investigation process would provide an ideal forum for this further work. Moreover, the decision to make a market investigation reference would expand the range of implementation options available to the CMA, rather than limiting them or committing the CMA to any particular course of action.

5.6 The Interim Report notes the need to avoid cutting across regulatory reform by government as a reason not to make a market investigation reference. However, the Interim Report acknowledges that the proposals which government has previously committed to implementing (along the lines contemplated by the Furman Review, such as the code of conduct) would not necessarily address the structural issues identified in the online display advertising market.²⁵ As such, by focusing a market investigation on the open display advertising market and, in particular, the structural issues relating to that market, the CMA would be able to avoid this risk. If the CMA concluded that a separation remedy was warranted, this would complement, rather than interfere with, government reforms.

5.7 Finally, the CMA suggests that “*there is a case for reviewing the scope and potential impact of a new ex ante regime – and in particular a code of conduct, which would attempt to address the concerns arising from the exercise of market power – before deciding to take forward more intrusive measures*” (paragraph 7.15). News UK understands the CMA’s desire to ensure that its remedies are no more intrusive than is necessary for them to be effective. However, given the CMA has already identified doubts as to the effectiveness of a code of conduct in isolation (see paragraph 4.2 above), News UK submits that it would be appropriate for the CMA to begin the process of evaluating additional measures such as separation remedies in parallel, through a market investigation. Given such an investigation would last until at least early 2022 (18 months from the July deadline for publication of the CMA’s Market Study report), if the government moves forward promptly with implementation of an ex ante regime, there would be time for the CMA to factor in the initial effects of the regime into its final decision on any remedies. Conversely, if the government does not act promptly,

²⁵ Para. 7.15: “*It is therefore less clear whether the interventions proposed by the Furman Review could, if taken forward by government, be implemented in such a way that would effectively tackle the structural issues we have surfaced*”.



this would reinforce the case for the CMA to take action itself, using powers available following a market investigation.

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

- 5.8 News UK agrees that recommendations to government are an appropriate means for implementing the majority of the interventions contemplated in the Interim Report; in particular those requiring primary legislation. However, for the reasons explained above, News UK considers that the most appropriate means for implementation of a separation remedy would be for the CMA to make use of the order-making powers available to it following a market investigation.

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?

- 5.9 Subject to News UK's comments above regarding the case for a market investigation reference, News UK agrees on the identified areas for further work and only has limited comments.
- (a) News UK wholeheartedly agrees with the CMA pursuing an analysis of money flows within the ad tech stack and, in particular, Google's "implicit commissions" (e.g. via its "double auction mechanic"). Ideally, this should fully decompose Google's total commission into its different components, whether explicit or implicit (ad server fees, AdX revenue share, Google Ads fees, double auction, Exchange Bidding fees etc.) News UK notes some difficulty faced by the CMA in that respect. News UK also notes that even the explicit commissions identified by the CMA to date represent an extremely significant share of advertising spend and that, as shown in the CRA Report, the presence of further implicit commissions acts to both facilitate rent extraction and give Google further incentive to engage in foreclosing behaviour.
 - (b) While News UK agrees that it is informative to consider the extent of multi-homing by advertisers, it notes that the CMA has already identified evidence of significant single homing behaviour, particularly by smaller advertisers who constitute a key component of Google's customer base. The presence of these single-homing advertisers is likely to further enhance Google's ability to foreclose competition in key layers of the ad tech stack.
 - (c) News UK considers that further work is required to understand the source of trends towards vertical integration in the ad tech stack and disentangle the role played by: (i) potential efficiencies stemming from integration; (ii) privacy concerns; and (iii) the necessity of responding to Google's conduct. News UK anticipates that the claimed efficiency benefits will be found to have been overstated and largely responsive to policies which have undermined inter-operability and mix and match competition.

11 February 2020



ANNEX 1

Response to detailed consultation questions on code of conduct (Appendix I)

I.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?

1. Yes, News UK agrees with the proposal to develop an enforceable code of conduct for SMS firms, in conjunction with other targeted interventions.
2. News also agrees that the criteria outlined in section 6 of the Interim Report are a reasonable starting-point in determining whether a platform has SMS.
3. As to the threshold for determining compliance with the code, News UK believes the most obvious candidate would be the civil “balance of probabilities” standard. However, the CMA should consider whether there are circumstances in which the burden of demonstrating compliance with the code should rest with, or shift to, the SMS firm.²⁶ There should also be a lower threshold for the CMA to impose interim measures pending conclusion of an investigation.

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

4. As described in response to Question 9 in the main body of News UK’s response, News UK broadly agrees with the three principles outlined in Table 1, but recommends that the regulator should have the power to promulgate additional principles should this prove necessary.

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

5. News UK agrees with this approach: the use of principles-based rules with guidance, rather than highly detailed and prescriptive rules, is necessary to provide the flexibility to respond to new technologies and practices as they emerge.

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

6. The regulator responsible for the code should be able to enforce the code directly against SMS firms by issuing directions, rather than having to seek a court order, and should have extensive investigatory powers. News UK agrees that the regulator’s powers should include each of the powers listed at paragraph 17 of Appendix I.

²⁶ News UK notes that the report prepared for the European Commission on [“Unlocking Competition in the Digital Era”](#) by Crémer, de Montjoye and Schweitzer recommended the reversal of the burden of proof in certain circumstances relating to self-preferencing by digital platforms with a “regulatory function” (see e.g. page 7 of the report).



I.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?

7. News UK notes that the CMA currently envisages that non-compliance with the code would not result in financial penalties (paragraph 23 of Appendix I). News UK respectfully disagrees with this approach. Without the prospect of substantial financial penalties, SMS firms will retain strong incentives to engage in practices that contravene the code and no countervailing cost for doing so.²⁷
8. If the CMA's concern is to avoid delay in reaching a decision requiring the termination of the infringing conduct, this could be achieved either through the use of interim measures, or by designing the process so that penalties are imposed in a subsequent administrative proceeding, after the finding of a substantive infringement.²⁸

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

9. At this stage, News UK does not have a concluded view on the detailed process for an investigation; however, the overriding consideration should be that investigations are resolved quickly (and certainly more quickly than Competition Act 1998 investigations). News UK is concerned that a two-phase formal process on top of an initial screening to determine whether there is a case to answer (as contemplated by paragraph 21 of Appendix I) would result in delay – for example, requiring formal Phase I *and* Phase II decisions to be drafted and go through internal approval processes before the finding of an infringement. News UK believes it is like to be more efficient to use the initial screening to filter out clearly unproblematic conduct without opening a formal investigation, rather than adding an additional formal Phase I to the process.
10. Where industry players bring a dispute to the regulator (as opposed to the regulator opening an own-initiative investigation), the process should remain inquisitorial (i.e. the regulator actively investigates rather than requiring the complainant to prove an infringement), given the likely imbalance in resources between a complainant and a major digital platform.

I.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?

11. Yes, this is clearly necessary for the code to be effective.

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

12. The power of the regulator to require reporting by SMS firms should not be subject to prescriptive limits (e.g. specific categories of information). Instead, the regulatory should be able to require SMS firms to report whatever information (and in whatever form) it considers reasonably necessary for the purpose of monitoring and enforcing compliance with the code.

²⁷ While firms harmed by practices contrary to the code might in principle be able to seek damages in civil proceedings, the prospect of litigating against firms with the scale and resources of the large online platforms is unlikely to be attractive in practice.

²⁸ For example, in the context of the Broadcasting Code, Ofcom's practice is to decide whether a broadcaster has breached the Broadcasting Code and, in serious cases, put the broadcaster on notice at that point that it will consider the imposition of a statutory sanction. Whether a financial penalty or other statutory sanction is imposed is then the subject of a further procedure.



ANNEX 2

Response to detailed consultation questions on potential interventions in digital advertising markets (Appendix M)

Separation interventions

We have discussed the following specific potential interventions:

- 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 user-facing markets.

In respect of each of these potential interventions we invite stakeholders to provide views on the following questions:

M.1 Would the intervention be effective in addressing the concerns identified in Chapter 5?

1. As set out in the body of News UK's response, News UK considers that no single intervention is likely to be effective in isolation. However, there appears a good case for each of the interventions contemplated above, and a particularly strong case for separation of Google's publisher ad server.

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

2. The practicality of limiting the scope of a remedy in this way would need to be evaluated in the next phase of the CMA's Market Study or during a market investigation.

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

3. For the reasons explained in the main body of News UK's response, separation remedies should be considered as a priority by the CMA, in the context of a market investigation focused on the online display advertising market.

M.4 How could the intervention be designed to minimise costs and maximise benefits

4. The detailed design of a separation remedy would require further consideration; however, News UK notes that a remedy requiring separation of Google's ad server would already be a narrowly-targeted one. As a general point, as explained in paragraphs 3.4ff above, News UK



considers that the costs in terms of lost efficiencies of vertical integration are likely to be limited giving the availability of alternatives with less restrictive effects on competition.

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

5. News UK believes a separation remedy is likely to make a substantial contribution to the improved functioning of digital advertising markets. Given the size of these markets, the resulting benefit is likely to outweigh any costs substantially. (As noted above, News UK believes the costs in terms of lost efficiencies of vertical integration are likely to be limited in any event.)

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 we also invite stakeholders to specifically consider:

M.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?

6. An appropriate form of separation would make a substantial contribution to addressing structural concerns in digital advertising markets, although the implementation of other remedies would remain necessary given Google's ability to exploit market power from other sources.
7. While ownership separation would represent the most clear-cut solution, News UK recognises the practical challenges involved and believes a well-designed form of structural separation under common ownership or operational separation could also be effective, as outlined in News UK's previous submissions on remedies.²⁹ In this context, News UK believes that an effective remedy would need to involve, at a minimum, a combination of accounting separation, separate management with distinct, localised incentives rather than being incentivised to maximise Google's overall performance at group level, requirements to market the products separately, and restrictions on the flow of information between the two businesses, prohibiting preferential access to data.
8. In assessing these issues, News UK would encourage the CMA to consider further the analogy with financial markets that is referenced in the Interim Findings.³⁰

M.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?

9. In News UK's view, it would be more effective for Google's publisher ad server to be unbundled from the SSP component of GAM and run separately, rather than separating out GAM while maintaining it as a fully-integrated product. There may also be a case for the SSP component of GAM to be separated from the rest of Google's business, but it should also be run separately from the publisher ad server.

²⁹ See Section 3 of News UK's submission on potential remedies, dated 10 October 2019. As noted in that submission, a separation remedy would be intended to offset a situation created through acquisition (i.e. Google's acquisition of DoubleClick in 2008), not through organic growth by Google. Accordingly, the CMA can be confident that such intervention would not have an adverse impact on firms' dynamic incentives.

³⁰ Para. 6.171.



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

M.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?

10. News UK does not have direct insight into the nature of the potential privacy concerns at issue, but notes that its experience suggests privacy arguments made by Google should be treated with scepticism (see, for example, News UK’s submission regarding bid-transfer data dated 25 September 2019).

M.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?

11. News UK believes that this intervention would still be a worthwhile improvement on the status quo.

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

12. This is likely to be necessary, given Google’s incentives and history of self-preferencing behaviour.

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

M.11 Would mandating access to Google’s attribution service rather than underlying data address privacy concerns?

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

13. News UK does not understand what “mandating access to Google’s attribution service” is intended to entail. In News UK’s view, the priority is that any future cookie replacement should allow third-party technology to offer attribution technologies on a level playing-field with Google.

In respect of mandating access by independent intermediaries to Google’s and / or Facebook’s data from its user-facing markets we also invite stakeholders to specifically consider:

M.13 Could a comparable intervention to that which we have indicated could be applied to attribution data could also be developed to open up access to data collected by Google and/or Facebook for targeting purposes?

14. News UK would favour such an intervention, and believes it could be implemented by opening up targeting data to independent data management platforms (DMPs) such as Permutive, Lotame, Salesforce DMP and so on. This would allow publishers to target their audiences without having direct access to the data, but also without tying the data to a specific Google product (i.e. GAM).



Transparency interventions

We have considered the following potential 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:

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

15. Again, as set out in the body of News UK's response, News UK considers that no single intervention is likely to be effective in isolation. However, there appears a good case for each of the interventions contemplated above, in conjunction with the code of conduct and separation remedies discussed elsewhere.
16. In relation to the last two interventions listed, as explained in response to Question M.23, News UK's preference would be for data to be provided to publishers to analyse themselves, alongside the provision of fully granular data to a regulator.

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

17. Yes, News UK believes each of these interventions should be taken forwards. Given the overlap with the "Trust and Transparency" principle of a code of conduct, News UK can see a case for these interventions to be enforced by the body responsible for the code of conduct, but also notes that such requirements would be within the scope of the CMA's order-making powers following a market investigation.

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

18. Costs could be minimised by limiting reporting requirements to Google and Facebook, rather than extending them to all ad tech providers. Against this, the CMA should consider whether there would be benefits from extending certain requirements to apply to all major ad tech vendors (a number of which similarly operate as 'black boxes'), in order to create a minimum reporting standard.



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

19. Yes. News UK believes that the costs of such transparency requirements would be very limited and could easily be borne by companies of the scale and profitability of Google and Facebook. Any costs would be outweighed by benefits from the improved functioning of digital advertising markets.

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

M.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?

20. News UK believes that transparency interventions should be implemented through rules set and enforced by a regulatory body (whether the CMA or the regulatory body responsible for the code of conduct). Relying on industry to agree standards is likely to result in delay and, to the extent Google and Facebook were allowed to participate in the process, risk the effectiveness of the intervention being undermined.

M.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?

21. News UK considers that, at a minimum, such information should include the following fields: (i) timestamp; (ii) auction ID; (iii) transaction ID; (iv) floor price; (v) net bid price; (vi) gross bid price; (vii) margin taken; (viii) whether impression transacted; (ix) bid rejection reason; (x) winning bidder (advertiser, DSP, buyer); and (xi) DSP, buyer, advertiser and deal ID for losing bidders.

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

M.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?

22. News UK is not aware of any existing standard formats that could be used.

M.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?

23. While an intervention applying just to Google and Facebook would be an improvement on the status quo, News UK believes that the intervention should apply to all ad tech providers. Otherwise, similar issues risk arising in the future.



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:

M.22 What information should be provided?

24. Please refer to News UK's response to Question M.19 above.

M.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?

25. News UK's preference would be for data to be provided not only to a regulator, but also to publishers to analyse themselves. Allowing publishers to analyse data themselves would be the best way to restore trust, allow publishers to understand whether they are getting value for money and to switch away if not. Any concerns around disclosure of competitively sensitive information should be capable of being managed through techniques such as anonymisation and aggregation (which should be limited to the level strictly necessary to address those concerns).

26. At the same time, fully granular data should be provided to a regulator for audit as an additional safeguard. This would also help provide assurance for smaller publishers with more limited resources for in-house analysis.

