

## **Competition and Markets Authority – Online Platforms and Digital Advertising Market Study**

### **Oracle's Comments on the CMA's Interim Report**

#### **General comments**

On 18 December 2019, the CMA published an interim report summarizing its findings following its market study into online platforms and digital advertising. In its report, the CMA provides a detailed overview of the complex online advertising and ad tech industries. In doing so, it exposes Google as a central pillar in a dysfunctional ad tech industry.

Oracle welcomes and supports the findings set out in the CMA's interim report, and in particular the finding that Google's exclusive access to large amounts of user data gives it a substantial advantage in online display advertising intermediation. Oracle notes that consumers do not provide this data to Google willingly. Rather, Google forces consumers to give up their data by requiring them to accept the terms of Google's privacy policy in order to access any of its monopoly consumer-facing services. Given the depth and breadth of Google's data collection operations, this is not a fair bargain.

By conditioning access to its monopoly products on expansive data collection and combination rights, abusing the power of default settings and influencing consumers through choice architecture, Google manages to induce billions of consumers to give up more data than they may be comfortable with – without adequately compensating them for it. The low engagement with Google's privacy settings – even for those consumers that are privacy sensitive – indicates that consumers are resigned to the fact that meaningfully engaging with the Internet without having their data collected by Google is virtually impossible.

As the CMA notes, Google's competitive advantage in online display advertising intermediation is exacerbated by its exclusive access to YouTube and search inventory. The result is that Google holds leading shares in every layer of the ad tech ecosystem. This leading presence in multiple layers of the ad tech stack causes conflicts of interest, leading to a dysfunctional industry that only works for Google.

Oracle also agrees with the CMA's finding that Google's decisions to restrict data flows to independent ad tech service providers is making it increasingly difficult to provide independent analytics, measurement and ad verification services. In particular, Google's removal of DoubleClick User IDs from DCM log files and its refusal to allow third-party providers to collect raw data signals for independent measurement on its own properties such as YouTube will inevitably result in higher instances of ad fraud and overpayment by advertisers.

#### **Chrome**

One evolution Oracle believes is likely to shape the future of the ad tech industry and which it urges the CMA to focus on when considering next steps is how Google uses its ownership over the main vehicle to browse the Internet further to entrench its leading positions in online display advertising intermediation. In particular, Google has proposed changes to Chrome that have

the potential to directly prevent rival ad tech companies from implementing their own advertising solutions.

*First*, Google announced in May 2019 and confirmed on 14 January 2020, that it would take steps within its Chrome browser to inhibit the placement of third-party cookies. The cookie is a fundamental building block for competitor display advertising due to its importance in allowing advertisers and publishers to transact in the sale of inventory based on data-driven audience targeting. While Google's ad tech competitors would face even greater difficulties in providing behavioural targeting because of their decreased ability to collect data, Google itself would remain virtually untouched by these changes as it has sufficient workarounds to continue collecting data at a large scale (e.g., from Android users or signed-in users).

*Second*, in August 2019, Google announced a Chrome privacy sandbox concept that would be especially detrimental to third-party verification providers. In essence, Chrome would only allow a small number of "pings" from third parties to the browser, thereby limiting their ability to detect bot traffic.

The intention behind these policy changes is self-evident: they serve to foreclose ad tech rivals from the market without impacting Google's exclusive methods of obtaining data, targeting, attribution, and methods of ad fraud detection. Under the guise of privacy, Google's actions will decimate competitor ad tech companies as advertisers will turn toward companies that are able to continue collecting vast amounts of data on users. Because these platforms will be able to continue offering more granular ad targeting and measurement, advertisers are likely to increase their spend on YouTube, Google's other owned inventory and walled gardens, to the detriment of other (smaller) publishers.

Yet, unsurprisingly, these Chrome policy changes do not resolve the privacy concerns they purport to address. While competitors will be restricted in the user data they can gather, the policy changes do not affect any of the other intrusive methods that Google deploys to collect consumer data for its own benefit. Google only uses the illusion of privacy to implement measures that harm competition as it discriminates against competitors and makes it impossible for advertisers to verify key advertising metrics. The direct result is the exacerbation of Google's enormous data advantage, enabling it to preserve and expand its power over the ad tech industry.

In light of the above and other findings in the CMA's interim report, Oracle believes the CMA's conclusion that intervention is required to make the ad tech industry function to the benefit of ad tech competitors, publishers, advertisers and consumers, is warranted. In what follows, Oracle provides specific comments on, first, Appendix M, and, second, Appendix L.

## **Oracle's comments on Appendix M – Potential interventions in digital advertising**

### ***1. Limiting Google's collection and combination of data***

Google's access to consumer data and analytics data creates a substantial advantage for Google in online display advertising intermediation. One way in which competition in ad tech could be made more fair is by preventing Google from conditioning access to its dominant consumer-facing products on extensive data collection and combination rights.

First, consumers should be given a free choice as to which data they want to have collected by Google (opt-in), and Google should be prevented from coercing or inducing consumers to agree to more data collection than is required for the functioning of the service they are trying to access. If consumers do not actively choose to have their data collected by Google, they should remain free to use any of its dominant or non-dominant services.

Second, as the CMA notes, in 2016 Google imposed a privacy policy change on consumers allowing itself to combine DoubleClick data with users' names and personally identifiable information that Google had previously collected from Gmail consumers and other authenticated users. In addition to being extremely privacy intrusive, this right broadly to combine data across different services and applications exacerbates Google's data advantage. Google should be prevented from conditioning access to any of its services on users' agreement to Google's data combination rights, and should be allowed to combine data only when consumers give explicit consent to do so and to the extent required to integrate the functioning of consumer-facing services.

## ***2. Separating Google's advertising business and data business***

The CMA considers whether it should require Google to provide access to, first, data around the actions of users which it gathers from its Google tags, and, second, user data applied for user targeting purposes, noting that privacy concerns might complicate effective implementation of especially the latter option. Alternatively, instead of mandating access to the underlying data, the CMA considers that, third, Google could be required to allow rivals to access the results of Google's analytics process.

Oracle has the following remarks:

1. A scenario in which Google would be required to make available only data collected through Google tags is not sufficiently far-reaching. This intervention should at least cover all data collected through any of Google's tracking technologies – not just tags.
2. Even in the most far-reaching scenario put forward by the CMA, *i.e.*, a scenario in which competitors can gain access to data collected by Google tags and to data used for targeting purposes, Google's competitive advantage will continue to exist. Google will continue to have access to all data in its possession, whereas competitors might be able to obtain access to subsets of it, meaning it will continue to be easier for advertisers to turn to Google's one-stop-shop.
3. Any (valid) concerns regarding privacy should be remediable, even when it comes to providing access to data used for targeting purposes. Oracle acknowledges that it may prove challenging to ensure sufficient anonymisation of data before it is made available to third parties. However, these challenges should not prevent the CMA (and potentially other regulators) from addressing the competition concerns identified in the interim report.
4. The CMA considers that these interventions would involve establishing a price for the access to the data that reflects the economic cost of the data to Google. This assumes the data belongs to Google whereas, in fact, it belongs to consumers. As set out above,

Google coerces consumers to accept its invasive data collection tactics. The mere fact that Google decides to take consumers' data because it is technically easy to do so and because it forces consumers to agree to it, does not make Google the rightful owner of the data. As part of a remedy to restore competition on the merits, Google should not be compensated for data that is not its data to begin with. Instead, consumers should be given the opportunity to transfer their valuable data to a third party of their choice in exchange for a fair remuneration. By creating the conditions for competition in consumer data, consumers might gain actual consideration for the bargain of sending their data to a third party, while simultaneously giving ad tech competitors the means to overcome Google's data advantage.

### ***3. Access to data for independent ad verification and attribution analysis***

The CMA should require Google to provide sufficient data to allow for effective ad verification and attribution analysis. Rather than aggregated data or insights, Google should make raw data available to advertisers or publishers such that they can reach their own conclusions as to the effectiveness of their ad campaigns. In addition, Google should not prevent third parties from collecting data directly from its owned properties, such that third parties are not simply measuring Google's curated data but can provide independent measurement and verification services.

### ***4. Separating Google's ad tech stack***

The CMA is considering whether Google should be required to separate Google Ad Manager, the leading publishing ad server, from those other parts of its business where there is a potential conflict of interest or where it could grant unfair advantages. Oracle agrees with the CMA that such a separation would entail significant benefits.

1. An independent publisher ad server would have no incentive to influence the identity of the winning SSP or DSP.
2. Google's DSP would no longer have an incentive to offer its demand only through a particular ad server, to the detriment of third-party ad servers.
3. If Google's combined ad server/SSP activities operated independently, this ad server/SSP would become less important to publishers, reducing barriers to switching ad servers.

Given that Google has integrated its publisher ad server and SSP, the CMA wonders whether this intervention should be implemented by reversing this integration and separation of the ad server as an independent service, or by separation of the combined ad server/SSP. Oracle notes that as one way to ensure effective and fair competition in all layers of the ad tech ecosystem, Google should be required to spin off its publisher ad server as an independent service. If not, its incentive to favour its own SSP over other SSPs continues to exist.

The CMA has also noted that conflicts of interest could arise when other intermediaries active in the open display market operate both on the buy side and sell side, for example offering both DSP and SSP services to advertisers and to publishers in respect of the same item of advertising

inventory. At this time it is not necessary nor desirable to consider a general requirement on all other intermediaries to separate their buy-side and sell-side businesses. The key concern is the leveraging of market power from one layer of the ad tech stack to another. Given that many smaller players have no market power to leverage, such concern is unlikely to materialise. Intervention therefore does not appear to be warranted in the absence of significant market presence. This conflict of interest and the corresponding impact on competition in the various layers of the ad tech stack does exist in the case of Google, which is why a separation of Google's DSP and SSP could be an effective solution to reinstate a more level playing field.

#### ***5. Access to YouTube by independent DSPs***

The CMA considers whether it should require Google to open up YouTube inventory for sale by third-party DSPs. Oracle agrees that this would be a straightforward solution to improve competition between DSPs. Opening up YouTube inventory to independent DSPs should not raise privacy concerns, and Google should not be allowed to hide behind alleged privacy concerns when it suits its interests.

To ensure that Google does not retain any competitive advantage related to the ownership of YouTube inventory, the CMA would need to devise a mechanism to ensure that Google would treat Google and non-Google demand for YouTube inventory on the same basis. The well-functioning of such mechanism should be subject to review by an independent third party.

#### ***6. Separating Chrome and Google's advertising business***

Google's recent announcements regarding changes to Chrome could fundamentally change the functioning of the third-party display advertising ecosystem, with potentially a much more prominent role for web browsers. In light of these changes, the CMA should consider whether an intervention requiring a separation between Google's Chrome business and its advertising business might be appropriate.

### **Oracle's comments on Appendix L – Potential approaches to improving personal data mobility**

The overarching question the CMA has asked in the first section of Appendix L is whether mechanisms for increasing data mobility, which would allow consumers to share the data that platforms hold on them with other platforms, has merit in principle and what, if any, form of regulatory intervention is required to support it.

Oracle believes significant benefits may be realised from increased data mobility supported by regulatory intervention. There are direct benefits to consumers, as consumers will have a greater ability to control their data than currently exists, will be able to seek fair consideration for their data (via monetization or other trade for value), and the regulatory framework could be developed to provide consumers with enhanced privacy protections. There are also broader economic benefits, arising from increased competition in, at least, the ad tech services markets, but very likely in other markets as well, and the potential for encouragement of innovation.

Appendix L notes that existing data mobility products have had limited success, however an appropriately structured regulatory regime would be able to overcome the limitations of those

existing products. One appropriate model for the regulatory regime is Australia's Consumer Data Right legislation (which was in turn modelled on the UK's Open Banking laws).

### ***1. Does data mobility have merit in principle?***

For the reasons set out below, facilitating increased data mobility would generate significant benefits.

#### *Ad tech services markets*

Google has a substantial degree of market power across the ad tech services markets because consumer data plays a crucial role in the ability to provide these services.

For example, location data is of significant value to advertisers for two reasons. The first is that it allows advertisers to infer other personal information about individuals. Over time, location data creates a detailed profile about a consumer; where she lives, works, shops, eats, who she socialises with, and many other revealing insights about her pattern of life. That allows for targeted advertising based on a consumer's personal characteristics. In addition, location data enables advertisers to target ads to users in a specific location irrespective of the particular characteristics of those users. For example, advertising may be targeted to consumers in a particular country, region, radius around a specific location or near specific business addresses, irrespective of the other characteristics of the individuals. Even where it cannot be combined with other types of personal information in relation to an individual consumer, location data is very valuable in ad tech services markets.

Google uses the massive volumes of a broad range of data it extracts from consumers to create and continuously fortify a "data moat" that constitutes a substantial and insurmountable barrier to entry and expansion for Google's ad tech services competitors. Google does not share this "data moat" with any of its competitors.

Increased data portability may have the effect of helping rival firms in the ad tech services sector overcome the competitive disadvantage that they have because of Google's overwhelming volume of consumer data. This is a conclusion that has international support, for example, see the Australian Competition & Consumer Commission's (ACCC) analysis in the Final Report from its recently completed Digital Platforms Inquiry.<sup>1</sup>

Where ad tech services providers are able to access greater volumes of exclusive consumer data, more effective competitors to Google should emerge, which is likely to mean ad tech services markets become more competitive and prices reduce. Those markets should also become more efficient. Increased competition will foster innovation. In more competitive markets, ad tech services providers who compete with Google may be able to provide greater value to publishers, including traditional media companies, which will of course provide benefits to those publishers and therefore increased data mobility would provide economic benefits beyond the ad tech services markets.

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<sup>1</sup> See last paragraph on page 30 of the Final Report.

*Other benefits*

Appendix L refers to other benefits to consumers from a greater degree of data mobility, for example, referring to the fact that this would make it easier for consumers to move to a new social network without losing the data they have built up on another platform. However, broader consideration should be given to the innovations that could arise from data mobility – it would not just be direct benefits to consumers or more efficient ad tech services markets, but there could be diverse uses of the information that consumers were willing to share. For example, planning for Government services delivery could be facilitated from the provision of greater volumes of location data and other personal data. As noted in Appendix L, Open Banking has shown the potential for new opportunities for competition and innovation that could not have been foreseen when the Open Banking regulation was first put in place.

**2. Regulatory intervention**

Oracle's view is that regulatory intervention is required not only to ensure that protections are put in place for consumers but also to ensure that entities, such as Google, are required to appropriately transfer data and in the case of Google Android permit consumers to select on a go-forward basis alternatives to Google to process relevant consumer data such as location data. It would appear unlikely that voluntary data transfer would occur without that intervention.

Oracle agrees, as noted in Appendix L, that the General Data Protection Regulation (**GDPR**) regime which allows for data portability requests to be made is not effective for these types of transfers and should not be taken as a regulatory model.

Instead, guidance may be obtained from Australia's Consumer Data Right (**CDR**) legislation. The Australian CDR legislation is based on the UK's Open Banking regulation. The Australian legislation allows for the CDR to be rolled out on a sector by sector basis. When the CDR is rolled out in a sector, information held by an entity operating in that sector in relation to its customers is able to be transferred under strictly controlled conditions either directly to the relevant customer or to an accredited data recipient nominated by the customer. As stated in the Explanatory Memorandum for the CDR legislation: *the CDR aims to increase competition, enable consumers to fairly harvest the value of their data, and enhance consumer welfare.*<sup>2</sup> This should also be the aim of the UK regulatory regime.

The Australian regime ensures that the CDR will not be applied in a sector unless there are economic benefits, including in promoting competition, efficiency and data-driven innovation, as well as direct consumer benefits and the protection of consumers' information.

Importantly, the CDR legislation provides for enhanced privacy protections. It incorporates specific privacy safeguards that apply for the protection of customer data that may be accessed under the regime. The ACCC is obliged to implement consumer data rules, which may include privacy protections to supplement the privacy safeguards in the legislation. In addition, potential recipients of the data that may be shared under the regime require accreditation. This

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<sup>2</sup> Paragraph 1.3 of the Explanatory Memorandum for the Treasury Laws Amendment (Consumer Data Right) Act 2019 (Cth).

accreditation process is intended to ensure that such recipients are sufficiently responsible and resourced to handle customer data provided under CDR. Recipients must continue to meet certain criteria in order to maintain their accreditation.

Another key benefit is that the Australian legislation itself, although it provides necessary protections, does not prescribe the business model which may be adopted. In other words, if the CDR approach was taken, it would not be necessary for the UK Government to select any of the different data sharing business models that it has set out in Appendix L as a prescribed model. Instead, it would largely be a question for the entities who receive accreditation to determine the approach that they would take. For example, some accredited recipients could take the approach of seeking data transfers for use for their own purposes. Other accredited recipients could seek data for the purposes of acting as an intermediary, such as contemplated in a number of the models that the CMA has considered. Provided that the rules of the regime were followed, it would be up to participants themselves to develop appropriate business models.

Appendix L refers to the very limited success of the “Data Transfer Project” of Google, Facebook, Microsoft, Apple and Twitter, which allowed limited rights of transfer between online service providers. This should be attributed to the limited benefits to consumers from that scheme, which allows only limited transfers to occur. Given the project is limited to social media platforms, even if widely adopted, it is likely to have only very limited benefits in terms of increased competition or enhancing innovation.

Oracle’s view is that the commercial viability issues that have been raised in Appendix L should not be seen as a reason to abandon consideration of this reform. Looking again just at location data, sales of location targeted advertising reached an estimated US\$21 billion in 2018.<sup>3</sup> This data, and other consumer data, is extremely valuable. With an appropriate regulatory regime, consumers will have more control of their data and the ability to obtain value from it, with corresponding increases in competition and innovation across a number of different sectors (not limited only to ad tech services).

### ***3. Structure of regulatory intervention***

In looking at the proposed regulatory structure in the UK, there are 3 initial questions that should be addressed:

1. What data is within scope?
2. Which entities holding that data are within scope?
3. How should the data be handled?

*What data is within scope?*

Appendix L suggests the consumer data that would be transferred would be a broad range of data. Paragraph 31 refers to the possibility that the data to be transferred by Google and

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<sup>3</sup> See the ACCC’s Final Report from its Digital Platforms Inquiry at page 385.



Facebook would be the same customer information that Google and Facebook have, including inferred data.

There may be some problems with starting with such large databases and, in Oracle's view, there could be benefits in adopting a narrower category of data that is able to be transferred, at least on an initial rollout of the regime.

A two-stage approach could be adopted, with initially a smaller category of data to be subject to the regime, with the capacity to be expanded at a later point. If that approach was adopted, the initial data could be limited to location data (transferred on a real time basis). The benefits of this approach are:

1. Different entities would not be required to transfer different data and an individual exercising her data portability rights would not inadvertently transfer the personal information of third parties.
2. This approach would be less likely to have a chilling impact on innovation, given there would be no requirement for a data holder to provide portability for inferred data, which the holder has created itself.
3. This is a straightforward category of data to describe and quantify and it is already widely collected and shared (unfortunately, often without the consent of consumers). Technical difficulties are therefore unlikely to inhibit the adoption of the new regulation.
4. Location data has significant value, particularly in relation to advertisers, as described earlier in this submission, and therefore ad tech services providers (and others) are likely to compete to obtain and use this.
5. Giving consumers an enhanced ability to control who obtains their location data and how it is used will mean consumers will be able to fairly harvest the value of their location data as transparent markets for that data develop, within a framework that is able to provide for enhanced privacy safeguards for data transfers and use.
6. There is likely to be less need to impose ancillary measures such as to restrict other parties from having access to the location data. For example, in providing advertising, although real time location data is critical, access to that data does not need to be exclusive. If a consumer agreed to provide her real time location data to two ad tech services providers (assuming each had the necessary accreditation or obtained the data through an accredited intermediary) there is no reason why both could not obtain value from using that data. Exclusivity should be an option, however, as a consumer may find offers of greater value from an ad tech service provider that requires exclusive access to the data. In addition, consumers should be given the ability to restrict how the original collector of the location data may use that data. For example, if location data is required to provide a service, such as to provide directions to a user of Google maps, it may be collected and used for that purpose but not for ancillary purposes unless the consumer expressly consents – and the consumer should still be able to use the service if she does not agree to this ancillary use. This will assist in ensuring that the

data mobility remedy provides the benefits that it is intended to provide in terms of consumer control of use of their information.

Adopting the approach suggested above should ensure that the data portability remedy is able to be applied in practice and would not give rise to new concerns.

*Which entities holding that data are within scope?*

Appendix L suggests that the relevant regulator could decide, on the basis of market power or strategic market status, which entities should be subject to the new regulatory obligation to provide data mobility. A two stage approach may also be useful here, initially focusing regulatory obligations on entities collecting relevant types of data. For example, if initially only location data was required to be portable, the scope could be limited to Android OS, or to mobile OS providers collecting location data above a certain minimum scale of devices. A minimum number of devices is proposed in order to ensure that there is no unreasonable cost burden imposed on small businesses in complying with the regime.

*How should the data be handled?*

As noted above, a key benefit of the Australian legislation is that, although it provides necessary protections, it does not prescribe business models to be adopted. In other words, provided proposed recipients obtain accreditation and otherwise comply with the requirements of the legislation and the rules made by the ACCC for a particular sector (including the rules to obtain consent from the consumer for transfer, the strict privacy requirements and also any technological requirements applicable to the way in which data may be transferred), businesses are able to determine the best model for what data is sought and how it is used/the services that they will provide to consumers.

#### ***4. Concluding comments: Benefits of adopting this approach***

This remedy could be applied in practice, is proportionate and would not give rise to new concerns. If the UK's Open Banking/Australian CDR approach is adopted, consumers will have control over who their data is provided to, and how it is used, in a way that is not currently possible. This approach should also enable consumers to fairly harvest the value of their data, again, in a way that they are not able to currently do. There will be broad benefits for competition, efficiency and innovation across many sectors of the economy, not limited to ad tech services, without the imposition of a significant regulatory burden on business.