

CMA MARKET STUDY RELATING TO ONLINE PLATFORMS AND DIGITAL ADVERTISING

REACH PLC'S RESPONSE TO THE CMA'S INTERIM REPORT, 12 FEBRUARY 2020

1. INTRODUCTION AND SUMMARY

- 1.1 This document sets out Reach PLC's response to the CMA's interim report (the "Interim Report").
- 1.2 We have not responded to all sections of the Interim Report, but note that we broadly agree with the CMA's findings and consider that its description of the market is in line with our general experience.
- 1.3 We have also considered the specific consultation questions posed by the CMA. We note that some of the questions are very technical and we may not be best placed to comment on all of these. We have instead shared our thinking where we think we can add value from our perspective as a publisher.
- 1.4 We do consider that action needs to be taken in the areas which we have mentioned in our prior submissions and as set out below. Our main priority is that action is taken (rather than not being taken) and that it is taken in a timely manner. Our secondary concern is that any remedy put into place is capable of proper enforcement afterwards.
- 1.5 We are broadly neutral about the route through which such action is taken. We see advantages to the CMA's proposal to take action through recommendation to government, though of course then relying on political will to implement any recommendation.
- 1.6 We are a member of the News Media Association ("NMA"). We have seen the NMA's response to the Interim Report and refer to this further below. We understand that the NMA is arguing in favour of a market investigation reference. We would support a reference if and only if the CMA believes that it would be likely to lead to remedies being imposed more quickly and effectively.
- 1.7 We have focused on the two proposed remedies which we believe would be most beneficial to our business, and the publishing industry more generally:
 - (a) a code of conduct applicable to firms with Strategic Market Status (the "Code"); and
 - (b) transparency interventions in digital advertising.
- 1.8 Note that, although we agree with the CMA's proposals to introduce new regulation, we believe that this should only extend to regulation of the large digital platforms. It should not inadvertently lead to more regulation of content and the publishing industry (which is already covered by extensive regulation).

2. POTENTIAL PRACTICES TO BE TACKLED THROUGH A CODE OF CONDUCT

Platforms subject to the Code

- 2.1 We are supportive of the proposal to implement a code of conduct. We agree that this should apply to all platforms with Strategic Market Status ("SMS").

- 2.2 As noted in our response to the CMA's section 174 notice dated 22 July 2019 ("s.174 response"), Google and Facebook dominate our entire digital advertising lifecycle.¹ We therefore agree that they should both be subject to the Code.

Principles-based approach

- 2.3 We agree with the use of a principles-based approach, as this will provide the regulator responsible for enforcing the Code with the flexibility needed. However, it is important that this is backed up with clear guidance from a strong regulator to provide certainty to both the platforms with SMS and third parties dealing with the platforms.

Enforcement of the Code

- 2.4 We agree that the regulator should have the power to enforce the Code directly. We believe the regulator should have all of the powers set out at paragraphs 17 and 18 of Appendix I to the Interim Report.

- 2.5 In order for the Code to be effective, we think that the following points are essential.

- (a) The regulator must be able to enforce the Code in a timely manner. As explained below, changes made by platforms with SMS can have a significant impact on publishers overnight and it is therefore essential that any breaches of the Code can be remedied quickly.
- (b) The regulator must have strong enough powers to act as a deterrent to non-compliance by the platforms with SMS. The ability to impose financial penalties may be part of this.
- (c) A balance must be struck to ensure that penalties imposed by the regulator do not hinder or interrupt the services offered by platforms with SMS because, as explained further below, these services are indispensable to our business and those of the publishing industry as a whole.

Principle 1: Fair trading

- 2.6 We agree with both the need to include a fair trading principle and the specific examples which the CMA suggests could be included within this principle.
- 2.7 In particular, we believe it would be beneficial to include a requirement that both price and non-price terms imposed by Google and Facebook must be objectively justifiable. This is important because the significant market power which they possess makes them an indispensable trading partner for us and they therefore always hold the balance of power in any contract negotiations.
- 2.8 In addition, as explained in our s.174 response, the large digital platforms, including Google and Facebook, do not agree to negotiate the majority of their contractual terms at all.² To date we have found Google's non-negotiable contractual terms to be reasonable (and in fact often preferable to the terms offered by other intermediaries)³, and therefore believe these would currently meet the proposed requirements of the Code. However, we still believe it would be beneficial for the Code to require that terms must be objectively justifiable as the combination of Google and Facebook being indispensable trading partners and refusing to negotiate most contract terms means there is the potential for

¹ S.174 response, question 4

² S.174 response, question 9

³ S.174 response, question 15

them to impose terms which could have a significant negative impact on our (and other's) business.

- 2.9 We note that the NMA has suggested some additional requirements to those proposed by the CMA. We agree that these are broadly desirable but some may be hard to put into operation. We think that there is benefit in the CMA focusing on those which would be more easily enforceable as part of the Code. This would apply in particular to the following points.
- (a) A requirement for agreements between platforms and publishers to be clear and transparent and not imposed by one side on the other.
 - (b) Content ranking to be based on clear and open principles of fairness applicable to all publishers as well as on sound and justifiable assessments of relevance and authority rather than subjective editorial judgments.
 - (c) Where platforms extract value from news publishers' content, whether directly or indirectly, they should negotiate fairly with publishers to determine how that value should be shared in order to ensure an appropriate level of compensation to publishers.

Principle 2: Open choices

- 2.10 Open choices and interoperability is of less direct relevance to our business as a publisher and we do not propose to respond to most of the CMA's proposals and questions in this area.
- 2.11 We do however note that, as explained during our meeting with the CMA on 12 November 2019 (the "CMA Meeting"), increased portability of data would be beneficial to our business (and other publishers). For example, the ability for users to take their Facebook content and port it on another social media site would improve competition generally and therefore have an indirect impact on our ability to sell advertising inventory.
- 2.12 We note that in their response to the Interim Report, the NMA suggests some additional requirement to those proposed by the CMA. We agree with these.
- (a) SMS platforms must not impose, directly or indirectly, their own advertising software on news publishers when they use platforms' publishing software like AMP and Instant Articles.
 - (b) All SMS platforms should offer products that are interoperable with those developed by other developers in accordance with open industry standards.
 - (c) SMS platforms should not require publishers to adhere only to their standards, products or services. Using one platform service in relation to which the platform has market power must not oblige a publisher to use its other services.

Principle 3: Trust and transparency

- 2.13 As explained in our s.174 response and during our CMA Meeting, the lack of transparency from large platforms is having a significant negative impact on our business. We therefore strongly agree with the need to include a transparency principle as part of the Code.

2.14 In particular, we consider that there are three key areas in which more transparency is required:

- (a) auction data;
- (b) consumer data; and
- (c) algorithm changes.

Auction data

2.15 As explained in our s.174 response, there is currently a lack of transparency around the auctions used to sell advertising inventory.⁴ This has a significant negative impact on us and other publishers because:

- (a) it prevents us from understanding the true value of our inventory; and
- (b) it means we are unable to determine what fees Google is earning and whether it is giving itself preference over other bidders.

2.16 We therefore strongly agree that Google and the other large exchanges/SSPs (such as Index and Appnexus) should provide information on the auction process to publishers, including:

- (a) participants in the auction;
- (b) bid ranges; and
- (c) win and loss rates.

2.17 We note that Google has recently (since the end of January 2020) launched a beta release of a data set. This appears to include the data listed at paragraph 2.16 above in its AdManager user interface. This development is very recent and we are not yet sure of Google's plans, including whether it plans to charge for access to this data.

2.18 Although Google's release of such data is likely to improve our position in relation to the lack of transparency around auction data, we still believe it would be helpful to include obligations to provide this data as part of the Code to ensure that:

- (a) Google continues to release the data on a regular basis going forward;
- (b) Google does not charge for access to the data; and
- (c) the other large exchanges follow suit and provide similar levels of data.

Consumer data

2.19 As explained in our s.174 response, access to data on consumer patterns is key to driving higher yield for our advertising, and therefore our revenues.⁵

2.20 However, we struggle to obtain sufficient data about our users for a number of reasons, including:

⁴ s.174 response, question 25

⁵ S.174 response, question 29

- (a) GDPR makes it more difficult for us to gather data compared to large platforms such as Google and Facebook, who are able to get master consents across their businesses. By contrast, as explained during our CMA Meeting, we are unable to gain the necessary consents to characterise users with individual IDs so we have a large amount of data from our sites but cannot match it up. As a result, we struggle to gather information on our users, and do not even know the total number of users of our sites.
- (b) We do not receive sufficient data for content hosted outside our owned and operated sites (e.g. on Facebook Instant Articles).

2.21 We believe these two issues should be remedied by:

- (a) adopting open source ID; and
- (b) requiring the platforms under the Code to provide publishers with data about users – for example requiring Google to provide search/user data as part of our Google Analytics account and requiring Facebook Instant Articles to provide profile information about the users reading our content.

Algorithm changes

2.22 As explained during our CMA Meeting and in our s.174 response, only around [CONFIDENTIAL] of traffic to our sites comes to us direct. We are therefore heavily reliant on users being brought to our sites through Google search results and stories displayed on Facebook.

2.23 The number of users being brought to our sites is heavily dependent on the algorithms used by Google and Facebook, and changes to these algorithms can have a significant impact on traffic to our sites and ultimately our revenues – see Appendix A to our s.174 response for more information on this.

2.24 However, despite the importance of these algorithms, there is no transparency as to how they work or when changes will be made. Whilst we agree with the CMA that algorithms will of course need to be updated and too much transparency may lead to 'gaming' of the system⁶, we believe it is vital that the Code requires Google and Facebook to provide us and other publishers with:

- (a) within a short period of time after the Code is introduced, an explanation as to how their algorithms work; and
- (b) going forward, sufficient notice prior to making any significant changes to their algorithms.

2.25 In addition to the algorithms which impact on site traffic, we also have concerns about the lack of transparency in relation to the 'fact checking' algorithms used by Facebook and Google. Facebook carries out fact-checking of its Instant Articles and if it takes issue with the content of an article, will reduce its reach by up to [CONFIDENTIAL].⁷ Google Ad Manager uses algorithms to block content which it does not deem suitable for their advertising marketplace to appear on.⁸ Given we are IPSO regulated and will have already verified any stories which we publish, we do not believe it is appropriate for these decisions to be made in relation to our content.

⁶ Interim Report, paragraph 5.266

⁷ S.174 notice, question 5

⁸ S.174 notice, question 19a; response to CMA's questions of 19 August 2019, question 4

NMA proposals

2.26 We note that in their response to the Interim Report, the NMA suggests some additional requirements to those proposed by the CMA. We agree with these.

(a) In addition to explanation and notification obligations on platforms ahead of changes to content ranking, the platforms should be required to consult with publishers about such changes. Complaints about ranking practices should be referred to the digital markets unit, which must have the power to investigate and impose remedies. This complaints process should be available to publishers which have concerns about the impact of existing ranking algorithms on their traffic.

(b) There should be end-to-end costs receipting in the digital ad market, through the creation of an open data standard, enabling advertisers and publishers to track advertising spend and fees charged across the digital ecosystem.

3. TRANSPARENCY INTERVENTIONS IN DIGITAL ADVERTISING

Reporting of fees

3.1 Please see paragraphs 2.15 to 2.18 above for our response regarding transparency of auction data.

3.2 As explained at paragraph 2.15(b) above, the lack of transparency regarding auction processes makes it very difficult to determine what fees auction providers are charging. This makes it difficult for us to know the actual value of our inventory and how to realise the greatest returns from that inventory. We therefore consider that there should be an obligation on auction providers to report these fees. In particular, we think the auction providers should share details on fees throughout the chain of purchase (and from a practical perspective this could be provided eg monthly to avoid disclosure becoming too onerous).

3.3 We believe this should apply to all providers, rather than just platforms with SMS, and therefore think it may be more appropriate for this to be a separate requirement outside of the Code.

3.4 In addition, as explained during our CMA Meeting, there is a lack of transparency around Facebook's fees for Facebook Instant Articles. Although they provide information about how much our 70% revenue share amounts to, they do not provide any information about total sales/revenues or how sales were made. It would therefore be beneficial to receive further information from them setting this out.

3.5 In particular, we think it would be beneficial to receive the following information within the Facebook Instant Articles interface:

(a) gross price and net price; and

(b) a list of buyers (or at the very least a breakdown by buyer industry, monthly spend limits and geography).

Requirement on Google and Facebook to comply with industry standards on ad verification and measurement and/or enable third party verification of their own advertising inventory

- 3.6 As explained during our CMA Meeting, we believe that there should be a requirement for advertisers to only source inventory from the IAB Gold Standard (which Google and Facebook are both members of).

Requirement on Google and Facebook to provide certain data, including bidding data, to publishers

- 3.7 Please see paragraphs 2.13 to 2.26 above for our response regarding transparency.
- 3.8 As explained at paragraphs 2.13 to 2.26 above, we believe that Google and Facebook should be required to provide data to publishers, including auction data, data about users and information about their algorithms.
- 3.9 We believe this information should be provided directly to publishers and that it would not be sufficient for it to simply be provided to a regulatory body. We believe this requirement should be included as part of the Code.

Requirement on Google and Facebook to provide transparency about the working of auctions to a regulatory body or approved independent auditor

- 3.10 Please see paragraphs 2.15 to 2.18 above for our response regarding transparency of auction data.
- 3.11 As explained at paragraph 3.9 above, we believe it would be preferable for this information to be provided directly to publishers. We believe this requirement should be included as part of the Code.

4. SEPARATION INTERVENTIONS IN DIGITAL ADVERTISING

- 4.1 We note that the CMA is considering separation interventions as part of a package of remedies.
- 4.2 On balance, we would not be in favour of such an attempted intervention. We note some of the difficulties with identifying and implementing the correct intervention which the CMA has raised in the Interim Report, and we broadly agree with these. We think that there is a high likelihood that such an intervention, whether begun by government or some other party, would not ultimately be implemented as an effective remedy. We also think that there is a high likelihood that the other interventions we identify above would be jeopardised by energies being focused on separation options.
- 4.3 For these reasons, we consider that the CMA should abandon the proposed separation intervention, and instead focus on timely, effective and deliverable remedies.