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Competition and Markets Authority
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**SNAP INC RESPONSE TO ONLINE PLATFORMS AND DIGITAL ADVERTISING
MARKET STUDY INTERIM REPORT**

To Whom it May Concern,

We are grateful for the opportunity to comment on the CMA's interim report. Overall, we believe the interim report presents a reasonably accurate picture of the digital advertising competitive landscape in the UK today and we look forward in due course to the publication of the final report.

Today's digital advertising market is dominated by two conglomerates in the UK. Ensuring that a degree of market balance is restored must be a key goal of the CMA in coming months.

We will, therefore, focus on several areas covered by the interim report, most importantly concerning some of the proposed remedies. We have not followed the consultation's individual questions, since many of the areas of concern overlap two or more questions. Instead, we offer comments in two sections: comments on factual accuracy, organisation and logistics; and comments on proposed substantive remedies.

1. COMMENTS ON FACTUAL ACCURACY, ORGANISATION AND LOGISTICS

Definitional accuracy of market, scope and market actors

While we appreciate the logic in separating out various components of the digital advertising market, it creates a false impression that search and display advertising exist separately from one another. The reality is that advertisers have limited financial resource and users have limited time/attention. As a result, the digital advertising market should be considered holistically, not as a series of sub-markets. This is the single market in which we all compete.

The unnecessary (sub-)market definition of “social media platforms” creates an imperative to shoehorn market players into it, even when they are not an obvious fit. Snapchat, for example, is not, as claimed in the report, a social media platform. As we explained previously to the CMA, Snap is a camera company with three core products: Snapchat, Lens Studio (a software development kit for advertisers and users to create their own augmented reality AR lenses) and Spectacles (our hardware division, developing hands-free video cameras). Snapchat itself is a visual messaging platform, sharing few of the attributes of a social media platform. Snapchat has no vanity metrics, public profiles, or persistent content and little opportunity for the public posting of user generated content. Moreover, the content side of the Snapchat platform, Discover, is essentially closed. Curated and pre-moderated content for Discover comes primarily from third-party professional publishers, like The Telegraph, Vogue, Le Monde and The Economist. It also includes public accounts, where VIPs and celebrities, including Boris Johnson and Jeremy Corbyn, can post, but these contributors are pre-vetted. This means harms typically seen on public areas of social media platforms -- for example, fake news, state sponsored disinformation, hate speech, self-harm or suicide content -- are rarely found on Snapchat. On Snapchat, there is a focus on users’ individual creativity, rather than mass consumption; this focus is borne out by user research. In many ways, Snapchat is the antithesis of social media.

Yet, we are competing for the same advertising spend as social media platforms, search platforms, publisher platforms, indeed any platform that hosts digital advertising. The German Bundeskartellamt’s (BKartA’s) definition of the relevant market and of the players in the market, articulated in its recent investigation into Facebook’s alleged anti-competitive activities, could serve as a more effective starting point. While the BKartA identified the relevant markets quite narrowly, it acknowledged that those markets overlap materially, have significant impact on one another, and all compete for the same advertising spend¹. It also correctly identified Snapchat’s competitive and functional position in the wider digital market. We would encourage the CMA to adopt a similar approach.

There also appears to be an implicit assumption running through the report that social media platforms (and, by extension, their competitors in neighbouring markets) provide substitutable and homogenous services². That is not accurate. In fact, these services are quite differentiated. For example, the rich and varied services for 1:1 communication available today - from visual augmented reality, to communicating via maps or dating apps - exhibit genuine differentiation as a result of high inputs of innovation and creativity, which is a world away from basic text or voice communication.

The report’s misperception about substitutability, in turn, drives some of the proposed remedies such as interoperability. It is important for the efficacy of the final report and the

¹ Bundeskartellamt, Case Summary: Facebook, Exploitative business terms pursuant to Section 19(1) GWB for inadequate data processing, 15 Feb 2019

² This, despite the report noting that, “A key aspect of competition amongst social media platforms is their ability to offer consumers a different experience from the others. Social media platforms differentiate by focusing on different functions and delivering these in different ways.” p.85

recommendations that may be made to Government that the CMA properly understands that the services it is considering are highly differentiated and not easily substitutable. We address this issue in more detail below.

Finally, several references to Snapchat's functionality are inaccurate and require remedial action:

- Snapchat's Privacy terms and ToS are not, as claimed by the report, long and hard to read. They are the minimum length to reach required legal thresholds of applicability and enforceability. In order to make things easier for users to understand how our privacy policy is applied across the platform, each individual product feature has its own short, easy-to-read privacy descriptor. We have created a comprehensive privacy center, with straightforward explanations of what Snap does and does not do with users' data. In the same vein, our community guidelines and safety centre explain in simple terms to users what's expected of them when they use the platform and what we do to keep them safe while they're there. Far from being long and hard to read, our resources are considered models of good practice by the likes of the UK ICO and Australian eSafety Commissioner's Office.
- The report claims that "consumers cannot turn off ads based on the personal data gathered by Snapchat when using their services." The reality is that users are able to review, delete and switch off the lifestyle categories that help determine the content they are served on Discover. They are also able to set ads preferences in three key areas: audience based, activity based, and third party networks. These controls are easily visible in Settings in a user's account and can be changed at any time.

Cooperation with other UK public authorities

We are pleased to see the CMA acknowledge the key role the ICO plays in regulating important elements of the online digital market, but we would respectfully suggest a greater willingness to hand over matters where another authority has greater competence. Similarly, the new online-harms regulator (widely touted to be OFCOM) will enjoy competences in several areas touched on in the potential remedies section of the report. We would urge the CMA to allow the new authority to exercise its lead role in any investigation or proposed imposition of blanket remedies on the market.

For smaller companies, the proliferation of Government agencies and authorities with a part-role in regulating the Internet is becoming difficult to manage. We appreciate that part of the problem may stem from a lack of strategic policy coherence from Government itself over the past few years, inevitably distracted by Brexit-related priorities, but that should not be allowed to lead to a blurring of the lines of demarcation between regulatory authorities.

OFCOM's role in regulating the consumer Internet space should be more clearly defined in coming weeks, with the imminent publication of the Online Harms Bill and its introduction into Parliament. With that step completed, we would encourage the CMA to consult closely with OFCOM to understand its experience of identifying and applying Significant Market Power (SMP) status to dominant companies in the telecoms market. Further, with the transposition of the EU Electronic Communications Code (ECC) into UK law required by December 2020, OFCOM will be in a position to oversee those Internet companies newly

captured by the new sub-category of Interpersonal Communications Service (ICS). Many of the companies operating in the digital advertising market will fall under the definition of Number Based ICS (NBICS) or Number Independent ICS (NIICS), providing an opportunity for the first time of greater sectoral competition-related scrutiny. Again, the CMA's forbearance from ploughing ahead with granular, prescriptive, and potentially market-distorting remedies would seem sensible.

Cooperation with international authorities and importance of internationally scalable solutions

The report mentions several times the need for strong alignment with international regulatory authorities' work and decisions concerning digital markets. We agree with the sentiment and urge the CMA to enhance its information sharing with key peer authorities. The work underway in Australia, the EU, France, Germany and the US requires close coordination to prevent conflicting remedies being imposed on what are often global platforms and products.

Despite the interim report's reassurances to the contrary, the more granular and prescriptive remedies mooted by the report sit ill with the claim to be aware of the importance of internationally scalable solutions. Solutions cannot scale from the UK alone.

Timing of report and recommendations

While we appreciate the thoroughness with which the CMA has approached its task, we would urge an acceleration of the delivery of the final product to Government. The digital advertising market continues to consolidate, both vertically and horizontally, and waiting another 2 or 3 years before any action is taken will be unfortunate for smaller challenger companies and publishers, as well as start-ups hoping to enter the market.

2. COMMENTS ON SUBSTANTIVE PROPOSED REMEDIES

Interoperability

One of the report's favoured remedies appears to be some form of mandatory interoperability requirement on companies deemed to hold Strategic Market Status ("SMS"). The report notes that "interoperability involves some form of standardisation (potentially in terms of reduced innovation and variety in respect of the functionality that is standardised) ..."³. We agree with this statement -- but it underscores the reasons why interoperability will not cure the ills the report has identified.

The consumer Internet has succeeded to date precisely because it has been allowed to practice "innovation without permission." Features sets are not standardized across platforms.

Interoperability may work well with respect to standardised, commoditised utility-style services such as telephony or retail banking. By contrast, there is no need to create a single, standardised approach in this space. There are no material barriers to multi-homing; consumers use different services in different ways to fulfill different needs. It would be an

³ Interim report, p.248

own goal of huge proportions for the CMA, or indeed any other competition authority, to mandate interoperability across the industry, since the end effect would be to ossify the market, foreclosing it to innovative newcomers. As a smaller challenger in the market, we would urge the CMA to revisit its maximalist approach, as described on pp.249-250 of the interim report. Such an approach would create a heavy technological and administrative burden and harm innovation in the market.

That said, there could be merit in mandating limited and targeted competitor access on entities with obvious SMS, where abuse of that status or evidence of market failure have occurred. The appropriate regulatory body could consider remedying such actions where an investigation finds them to be anti-competitive. Any such remedies would need to be on an ex post, case-by-case basis, unidirectional in nature and strictly limited to avoid poisoning the wider market while addressing the market failure⁴.

Merits of a code of conduct for companies with strategic market status (SMS)

We broadly agree with the Furman Report and the CMA's initial conclusions that the notion of SMS could be applied to the digital advertising market. As with SMP in the telecoms market, with the privilege of market power should come additional responsibility. The criteria for SMS inclusion suggested by the CMA appear reasonable and, importantly, measurable. Evidence should be both quantitative and qualitative to create a fair balance. We agree SMS should apply to the corporate group as a whole, otherwise it is likely that a form of asset swapping across the affected group would occur in order to avoid regulatory capture.

The code of conduct, similarly, appears attractive for its principles-based and proportionate approach. We agree that the temptation should be resisted to add prescriptive measures in the code, allowing compliance details to be worked out (in a reasonably quick timeframe) between the SMS holder and the regulator. In terms of the three overarching principles proposed, we are comfortable with the entirety of the fair trading approach, open choices (with the exception of section 6.44, which would go too far in dictating technical decisions onto a business, restricting its room for manoeuvre in finding solutions to competition issues), and trust and transparency (with the exception of the final bullet of 6.46, which again is extremely prescriptive and would likely be overly punitive in a majority of cases).

The ex ante nature of the code would ensure the most egregious behaviour of a company with SMS would be identified and remedied quickly, without the need for lengthy investigations.

We would be interested to hear the CMA's view on whether the regulator would need to be able to direct SMS firms to implement, or reverse, measures for the purpose of fulfilling the objectives of the code. We would also be interested to hear views on whether a breach of orders under the code should be subject to other sanctions such as financial penalties (and if so, what impact that might have on the speed and effectiveness of the regime, including any appeal process).

⁴ Such ex post action would seem to be an effective remedy to the specific cases called out in the interim report, p.104

Fairness by design and evaluation of new choice architecture

We are in two minds about a “fairness by design” requirement being applied to those companies deemed to have SMS, for reasons we lay out below. Certainly, its application beyond the SMS companies would have a negative effect on market competition, as smaller companies would struggle to apply another set of design rules. Industry already has privacy-by-design, age-appropriate-design and safety-by-design requirements to interpret and implement, not to mention multiple voluntary codes and charters companies are regularly pressured - rightly or sometimes wrongly - to sign up to. Perversely, the largest companies benefit most from such prescriptive design and safety requirements, since they are the only ones with the luxury of excess resource to accommodate heavy regulatory prescription into their product development cycles.

The UK Online Harms Bill is imminent, with its multiple codes of conduct proposed (up to 22 of them, according to the White Paper)⁵. At the risk of some exaggeration, we are fast approaching the point at which there will be little incentive to establish a consumer Internet business in the UK. Indeed, one can see that many UK-based tech start ups and the venture capital community already are shying away from the space, favouring instead the relative sanctuary of AI, neurotechnology, fintech, biotech or B2B, where regulatory costs of entry are more predictable and less susceptible to political or media driven impulse.

Our recommendation for fairness by design would be to either drop it entirely from the CMA’s recommendations, or to apply it in a narrow and highly targeted way to companies with SMS and leave its enforcement to the ICO and/or the soon-to-be-appointed online harms regulator.

Similarly, it feels overly prescriptive of the CMA to be getting involved in decisions concerning new choice architecture. Our recommendation would be to strike this from the final report. Failing that, ascribing some responsibility to the ICO and/or the new online harms regulator would be preferable to having a competition authority meddle in design decisions of commercial entities.

Consumer control over data, PIMs, PETs, etc

Consumers’ ability to wield control over their data is an essential requirement and something protected by the General Data Protection Regulation (GDPR). We agree with the CMA that services’ terms and conditions and privacy policies should be intelligible and as brief as reasonably (legally) possible; we have addressed this point as it relates to Snapchat earlier in the submission, so will not repeat the points here. Suffice it to say that we believe the current data protection regulatory framework is fit for purpose and requires active oversight by the ICO to ensure effective implementation and interpretation. Given the GDPR is in its infancy, we believe it premature for the CMA to seek to propose ex ante remedies that could affect, or indeed impede, the efficacy of the regulation. Again, we would not object to ad hoc, ex post interventions (by the CMA in close consultation with the ICO) on SMS companies as a quid pro quo for the privileged position they enjoy in the market.

⁵ HMG, Online Harms White Paper, April 2019

Consumer control could be best enhanced through greater digital literacy; something OFCOM has had the statutory remit to address since its inception, but never sufficient funds or resources to execute effectively upon. The CMA notes that its and OFCOM's research shows that users want more control over their data. At the same time, however, user behaviour suggests that they exercise control while navigating between the various services they take advantage of on a daily basis. There has for a long time been a disconnect between what consumers say they want and what they actually do when it comes to online privacy and data protection⁶; hence, the most enduring policy would be one of both effective enforcement of GDPR and expanded and improved media literacy training for all citizens.

Relatedly, the CMA's musings on PIMs and PETs in the interim report give us some cause for concern. These are services and technologies that have a place in the ecosystem, but that place should not be prescribed by a competition authority. Indeed, should PIMs and PETs be considered, it would be for the ICO or Government to do so. We would urge the CMA not to be distracted by granular and prescriptive technology-based remedies that would supposedly solve the shortcomings of the competitiveness of the digital market. The risk is that, rather than solving problems, the imposition of certain standardised technologies creates stagnation in the market.

Last, the CMA considers the perspective (6.94) that consumers could be given the option to opt out of all data collection but still receive the same service, along with untargeted advertising, from the platform. This is a superficially attractive idea, but one that does not stand up to any real scrutiny for two main reasons. First, platforms use personal data for a variety of purposes beyond monetisation when it comes to advertising and serving content to consumers, particularly when it comes to user safety and security. Perhaps the most important among these is to ensure only age appropriate advertising and content appears to consumers - in particular, to protect minors. Without any personal data, this becomes impossible. Second, at the same time, if the ability to target advertising were to decrease, so would the economic value of the advertising. For smaller companies, operating on much tighter margins than the dominant platforms, this kind of value destruction would likely prove unsustainable.

Conclusion

We are grateful to the CMA for the thoughtful work undertaken thus far in assessing the digital advertising market and the tools and processes necessary to ensure its proper functioning. We also appreciate the CMA's candid self-reflection on not yet knowing the precise way forward⁷. In our response we have attempted to highlight constructively the highs and lows, as we see them, of the CMA's work to date. We look forward to continuing to engage on these topics at your convenience.

⁶ This lack of media literacy is well illustrated by the report's noting that "OFCOM research shows that a little over half of adults understand that search engines offer their services at little or no monetary cost because they gain consumers' attention and data", p.142

⁷ Interim report, p.278

Yours sincerely,

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