

Competition & Markets Authority

Market study interim report - Online platforms and digital advertising

Response to Key Questions

INTRODUCTION

Telegraph Media Group (TMG) – publisher of The Daily Telegraph, The Sunday Telegraph, telegraph.co.uk and other digital products - is a leading provider of high quality journalism in the UK and globally. Our stories and investigations – including such ground-breaking work as the MPs' expenses scandal - play a vital role in driving content across the media.

Like other news publishers, Google and Facebook are the most important digital platforms for our business. However, the internet and the availability of news on these platforms has changed consumer habits, and such change has brought a decline in circulation and advertising revenues in a way which has put huge pressure on revenues and profitability, and therefore longer term sustainability.

CMA Recommendations

We are generally in agreement with the CMA's findings and recommendations, but have some reservations.

We strongly support the development and implementation of a code of conduct. However, we have concerns that a UK-only based code of conduct, even if backed by robust enforcement measures, may not be adequate in itself to provide an effective remedy.

Platforms operate across multiple countries and can take advantage of jurisdictional fragmentation, and whilst we acknowledge the innovation and technical benefits that vertical integration brings to the market, we are concerned about the conflict of interest created and associated self-preferencing behaviour.

For these reasons, we believe that ownership separation of SSP and DSP services is required. However, in order to minimise disruption and address challenges such as increased latency, friction and sub-optimal user experiences and so forth, separation must be underpinned by the implementation of transparency and interoperability requirements, and a data sharing framework.

We also believe that the benefits would outweigh the costs and that the introduction of healthy competition will incentivise SMS platforms to preserve their respective market shares through innovation for a better user experience, rather than to shut out competition. Recent developments and innovations by Google and Facebook driven by GDPR, and regulatory action are clear indicators that Google and Facebook can do better and be more innovative for the benefit of the customer.

Trickle Down Effect and Browser Level Controls

We do not support control mechanisms implemented at *browser, system or device level*.¹ There is a real risk that implementing browser level controls, may be more harmful to publishers and comparatively more beneficial to Google in the same way as GDPR is. We are also concerned that some of CMA's proposed measures, even if limited to SMS platforms, may have a trickle-down effect as to operate as an overall adblocker that would

¹ CMA Interim Report, page 260, paragraph 6.127

inhibit online news publications from being able to undertake valuable targeted advertising, fraud prevention, brand protection, measurement and analytics. This would be seriously damaging to publishers' digital ad revenues and the digital ad market as a whole.

The CMA has identified that "Newspapers have been generating revenue in the UK through advertising for several hundred years..... These services have added substantial value to our society"² and that monetary value of personalised ads is significantly greater than that of contextual ads. The value exchange between the user and a news publication is far higher than that of a user and a platform. UK newspaper publishers are responsible for 50% of all frontline journalist costs in the UK³ and these revenue sources, which sustain such investment, need protection from disproportionate regulatory creep as well as anti-competitive practices.

Implementation of data control mechanisms for consumers at browser or server level is too simplistic. There are complexities to online privacy, such as lack of transparency, and, there are also consumer benefits of personalised advertising. Browser or server level mechanisms fail to allow consumers the opportunity to understand the positive benefits of data tracking, which, in addition to relevant ads, includes fraud prevention, measurement, frequency capping, brand protection. On the other hand, the detriment to publishers and to brands would be disproportionately harmful. A distinction needs to be made between platforms and publishers:⁴ *the platform acts as an important gateway for businesses to access as a significant portion of consumers.*⁵

In implementing any proposed control measures to SMS platforms, we urge the CMA to put in place appropriate safeguards in place to protect journalism.

We have a strong preference for *the development of codes of conduct and certification regimes*⁶ and the facilitation of secure sharing of data via a framework. Publishers are already working with various industry initiatives, including, among others, the DMA, AOP, AA and the ongoing development of IAB Transparency and Consent Framework to help develop industry codes, consent framework and certification schemes to help deliver this type of solution.

Dedicated Regulator

We support the establishment of a dedicated regulator (or regulators) to regulate these highly complicated markets. The regulator(s) should have the power and flexibility to investigate, develop and enforce new remedies, as new risks and societal concerns are uncovered.

We would also support investment in education in media literacy, working collaboratively across industry, regulators and consumer groups.

² CMA Interim Report, page 37, paragraph 2.6

³ Cairncross Review: Sustainable Future for Journalism, 11 Feb 2019, page 17

⁴ CMA Interim Report, page 254, paragraph 6.100 – "*To date we have not yet considered whether a similar obligation should apply to publishers, such as newspapers....*"

⁵ CMA Interim Report, page 236, paragraph 6.30

⁶ CMA Interim Report, page 24, paragraph 75, page 259-260, paragraph 6.124

Cross Sectorial Framework for Data Sharing

We already have concerns that positions taken by European DPAs and the ICO on targeted digital advertising⁷ will ultimately preclude by default personalised advertising on publisher websites. GDPR is already working largely to the benefit of SMS platforms.

We support the development of a cross-sectoral framework that could be used to address the tensions between competition and data protection laws to allow data to be shared between businesses and across the ecosystem but with appropriate boundaries that respect rights of privacy, while allowing legitimate business to be conducted. This could be a useful framework for the Open RTB, upon which news publishers are reliant for advertising revenues.

Platform and Browser Neutrality

The benefits of opening competition in search extend beyond merely the business of search. No search engine is perfect. Algorithms designed by each search engine will have biases. Any dominant search engine will have the ability to control the visibility of particular websites, the delivery of particular advertisements and particular information to the general public, that has the potential to shape and influence views that impact the businesses and politics.

Platform and browser neutrality is as essential as media plurality to promote a healthy capitalist democracy. Consumers should be free to choose from a range of different search engines, and not be compelled (by reasons of market dominance, commercial incentives or by virtue of *status quo bias*) to use only one search engine across all devices.

⁷ CMA Interim Report, page 254, paragraph 6.101, and, ICO Update Report on Adtech, June 2019